

July 15, 2008



**TRANSCRIPT  
July 15, 2008**

**MONTGOMERY COUNTY COUNCIL**

**PRESENT**

Councilmember Michael Knapp, President  
Councilmember Roger Berliner  
Councilmember Valerie Ervin  
Councilmember George Leventhal  
Councilmember Duchy Trachtenberg

Councilmember Phil Andrews, Vice President  
Councilmember Marc Elrich  
Councilmember Nancy Floreen  
Councilmember Praisner



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1 President Knapp,

2 Good morning everyone. Welcome to the County Council. We begin our morning with  
3 invocation by Rabbi Stuart Weinblatt, B'nai Tzedek of Potomac. Welcome Rabbi. I  
4 would ask you all to please rise.

5  
6 Rabbi Stuart Weinblatt,

7 As we gather this morning we're ever conscious of the fact that the strength of our  
8 nation derives in part from the blessing of our diversity. It is nourished by our openness,  
9 our tolerance for our differences, by our celebration and embrace of the fabric of the  
10 mosaic that enriches our community. When coupled with the pursuit of justice and the  
11 desire to do that which is right and good, we have been able to share our blessings, for  
12 part of the greatness of our society comes from our values and sense of decency. Our  
13 nation is enriched for we are the beneficiaries of those who participate in the democratic  
14 process. We deliberate over matters large and small with commitment to fairness and  
15 equality. And so we pray, oh God, may all of these attributes continue to serve us well.  
16 May our elected officials continue to find the wisdom and the fortitude to act wisely on  
17 behalf of all the citizens of this great county. The Prophet Micah declared it has been  
18 told you what is good and what I desire of you only to do justly, to love mercy and walk  
19 humbly with thy God. So we pray, dear God, may those who are here and who have  
20 been chosen as our representatives follow these words of advice; may their actions be  
21 just yet tempered by mercy and compassion; may they always have a sense of humility,  
22 cognizant that there is a greater being in the universe beyond any one of us who  
23 inspires and guides us. And in so doing, may they reach for the good in all aspiring to  
24 deliberate on our behalf with this in mind, and achieving the greatness of which our  
25 nation is so capable. Amen.

26  
27 President Knapp,

28 Amen. Ms. Lauer, general business.

29  
30 Linda Lauer,

31 We don't have any changes today, but we did receive one position, and that was one  
32 supporting Suburban Hospitals Campus Enhancement Project.

33  
34 President Knapp,

35 Very good. Thank you very much. Madam Clerk, are through minutes to approve?

36  
37 Crystal Brockington,

38 Yes, the minutes of June 24th, 2008.

39  
40 President Knapp,

41 Is there a motion?

42  
43 Councilmember Trachtenberg,

44 So moved.



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1  
2 President Knapp,  
3 Moved by Councilmember Trachtenberg.

4  
5 Councilmember Leventhal,  
6 Second.

7  
8 President Knapp,  
9 Seconded by Councilmember Leventhal. Any discussion on the minutes for June 24th?  
10 Seeing none, all in support of the minutes please indicate by raising your hand. That is  
11 unanimous among those present. Thank you very much. Quickly, Ms. Ervin will be a  
12 little late this morning. She is joining the County Executive for a Wounded Warriors  
13 Welcome that is taking place in Silver Spring for those returning veterans from Iraq and  
14 Afghanistan. And so we look forward to -- we're glad she is doing that on behalf of the  
15 Council, and we appreciate it. Obviously we appreciate and respect all that our veterans  
16 are doing and have done over the previous year, and we're glad that she is there  
17 representing us on our behalf. We turn to the Consent Calendar; is there a motion?

18  
19 Councilmember Trachtenberg,  
20 [Inaudible].

21  
22 Councilmember Floreen,  
23 Second.

24  
25 President Knapp,  
26 Moved by Councilmember Trachtenberg, seconded by Councilmember Floreen. Is there  
27 discussion on the Consent Calendar? You guys are easy this morning. Seeing none, all  
28 in support of the Consent Calendar indicate by raising your hand. That is also  
29 unanimous among those present. Thank you. We now turn to -- right on time -- update  
30 of the After Action report on water main break of June 2008. This is an ongoing  
31 discussion that has begun shortly after the water main break occurred and -- as a brief  
32 overview. And then there was a follow-up on the public safety communications element  
33 of the water main break that was taking place in the committee that a number of  
34 Councilmembers participated in. This is really a unique opportunity since September 11,  
35 2001, there have been many, many exercises, many activities that have throughout the  
36 region and in Montgomery County to try to ensure collaboration and coordination as  
37 incidents occur both in Montgomery County and outside Montgomery County. And this  
38 was an incident that had potentially significant consequences. We were fortunate in that  
39 there were not any dire things that occurred but required a great level of coordination to  
40 ultimately resolve the issue and to make decisions throughout the process. And so this  
41 is really an opportunity for the Council to hear from the Washington Suburban Sanitary  
42 Commission, Maryland National Capital Park and Planning Commission, particularly the  
43 Department of Parks, County Public Health Department and County Government to just  
44 get a sense of how the incident unfolded, how it presented itself, what the coordination



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1 was amongst the various entities that were required to ultimately bring this to resolution,  
2 and how were the decisions made throughout that process so we can get a sense of  
3 how is our incident-management process working or not working; what did we learn;  
4 what do we need to do differently the next time? And just how did -- it's an opportunity  
5 really for us to get an overview of what did occur, and get a better understanding of that  
6 for both us as decision makers and for the general public. And so that is our objective  
7 this morning. We have about an hour set aside in which we will focus on this and try to  
8 keep this fairly straightforward. Mr. Levchenko, do you have anything that you wanted to  
9 lay out for us?

10  
11 Keith Levchenko,  
12 Just to note that you had initially discussed having WSSC speak first. I know they are  
13 present. Not sure what other staff are here, but we can go one at a time if you like.

14  
15 President Knapp,  
16 Okay that would great. I turn first to the Washington Suburban Sanitary Commission.  
17 Good morning all. Commissioner Mandel.

18  
19 Adrienne Mandel,  
20 Good morning, President Knapp and members of the Council. We very much appreciate  
21 the opportunity to work with the Council and with the other presenters here today to  
22 review the June 15th, 48-inch water main break incident. This morning WSSC intends to  
23 evaluate our response, and together with the other presenters will try to identify any  
24 aspects of our policy, communications and coordination efforts that may need attention.  
25 I am pleased to turn to our Interim General Manager Teresa Daniell who will introduce  
26 staff and provide specific information. Thank you for this opportunity.

27  
28 President Knapp,  
29 Thank you.

30  
31 Teresa Daniell,  
32 Good morning. Thank you.

33  
34 President Knapp,  
35 And for the benefit of those viewing if could do the introductions for everybody on the  
36 platform, that would be great.

37  
38 Teresa Daniell,  
39 Certainly.

40  
41 President Knapp,  
42 Thank you.

43  
44 Teresa Daniell,



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1 With me from WSSC, of course, is Rudy Chow or Interim Deputy General Manager, Jim  
2 Newstat, Director of Communications, Karen Wright who is our group leader for  
3 Systems Control, and who was the Incident Commander during the water main break  
4 and all the events unfolding from that. Curt Wineland our Director of Intergovernmental  
5 Relations Office is here as well. And Sheila [Inaudible] also from the Intergovernmental  
6 Relations Office. I think I've captured everyone that's with us and who could provide  
7 more detail as needed.

8  
9 President Knapp,  
10 Thank you.

11  
12 Teresa Daniell,  
13 I know you had before you or at least have had an opportunity to read a very detailed  
14 timeline of the WSSC response from the time of the water main break to the conclusion  
15 of the World Water Advisory that a large portion of Montgomery County was under as a  
16 precautionary measure resulting from the break. What I want to do is take a few  
17 moments then to summarize the most significant parts of our timeline and our response,  
18 and then elaborate on the first four hours, which were the most crucial hours in  
19 responding to the event. As you know the water main broke at 9:15 p.m. on June 15th,  
20 and we were immediately aware of the break in the control center because of our 24-  
21 hour-a-day monitoring of our water distribution system. When you had lost pressure and  
22 water in elevated tanks in the Montgomery high zone, within two hours of the break we  
23 were out in the field looking for the break to stop the leak and begin the repair process.  
24 Had made initial notification to Montgomery County Department of Homeland Security,  
25 and were discussing worst-case scenario preparations. Within four hours of the break,  
26 we were well within -- into all the operations to locate the break, increase water flow,  
27 and communicate via mass communications to the public affected; as well as initiate  
28 discussions with emergency responders and Maryland Department of Environment, and  
29 Montgomery County Department of Homeland Security regarding water safety and use.  
30 Many of these actions were simultaneous. All the while we were continually monitoring  
31 the situation in our control room. We were also receiving thousands of phone calls into  
32 our call center. During the rest of the evening of June 15th and then the following two  
33 days we continued to update the WSSC chain of command and representatives of  
34 public safety and health agencies on our efforts to locate and repair the leak, as well as  
35 updates on the water sampling we were doing to ensure the water was free of any  
36 contaminants due to the depressurization of the water line. Now let me elaborate a bit  
37 on the actions within the first four hours, as I said. Fifteen minutes after we saw we had  
38 a break, we had a customer care member in the field looking for the problem. At 10:04  
39 the Incident Commander - that's Karen Wright -- at the Control Center had contacted  
40 Homeland Security to make an initial notification of the loss of water. AT 10:30 p.m., the  
41 Incident Commander and Communications Director discussed the possibility of the  
42 need for a boiled-water advisory as a preliminary look ahead if the water main break  
43 was not located soon. By 10:44 p.m., we were working with Potomac water infiltration  
44 plant to increase the flow of water to stem the loss of water pressure from the elevated



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1 tanks. By 11:00 p.m. we had added several customer care members to the field who  
2 were diligently searching for the leak. Meanwhile, back at the Control Center and the  
3 Call Center, we were scrutinizing our control panels and customer call-ins for any  
4 information that would help locate the leak. As you know, it was in a remote locate, as it  
5 turned out, and thus took a number of hours to locate. By 10:50 p.m. we had put out a  
6 quick news release to air on the 11:00 p.m. news on TV and radio, and had contacted  
7 the Montgomery Fire Department to alert them of the water loss. At this point I do have  
8 to stop and once again commend Karen Wright, the Incident Commander, and Jim  
9 Newstat, Director of Communications, for their immediate actions, as well as for the  
10 forethought to begin preparing for a situation that, in fact, did come to fruition. They, I  
11 think, brought the best of both immediate tactical action to find the leak and resolve the  
12 issue, and forward-looking planning in the event that it was going to take a while to find  
13 it. But to continue my brief rundown; by 11:46 p.m., the Director of Communications was  
14 working on another communications avenue, the website, for updates. By midnight  
15 more Call Center staff arrived to answer customer calls and more arrived an hour later.  
16 At four minutes after midnight, the Control Center updated the Fire Chief and speaking  
17 several times in the next hour. At 1:08 a.m., the Control Center phoned Maryland  
18 Department of Environment and then spoke with their drinking water expert at 1:51 a.m.  
19 By this time not only had all the initial operational actions and coordination efforts  
20 commenced, but in some cases updates were already occurring. Now skipping forward  
21 three hours, at 4:27 the break was located. The length of time it took to locate the break  
22 was the single most important reason that we were forced to make our decisions  
23 regarding water restrictions and the boiled-water advisory. And it probably caused the  
24 most angst for all concerned. I think the WSSC response was well executed with the  
25 appropriate coordination with all the County and State agencies that the situation  
26 dictated. But remember, we do practice our response every time we have a break. The  
27 process is virtually the same regardless the size of the line that breaks or the number of  
28 people affected. The unique circumstance this time was the loss of pressurization that  
29 led to the MDE requirement to issue a boiled-water advisory. And yet in our internal  
30 after action debriefing, we can still -- we think we can still improve our response in the  
31 following ways: continue to look for ways to communicate using all available avenues  
32 and technology. You simply can't communicate too much in a crisis -- a situation like  
33 this. We're going to investigate technology that we can put in place to locate leaks in  
34 remote areas without the obvious water gushing or water leaks or flooding in areas, it is  
35 very difficult to locate the leaks; so this will help. We do need to improve our telephone  
36 system to customers calling in so they can get information versus a busy signal after a  
37 certain number had called in. And then we want to continue, of course, to work with  
38 public emergency, safety, health agencies to continue to refine our coordination  
39 processes. Now with that as a brief overview and walkthrough of our timeline, I'd be  
40 happy to take any question that you may have, or elaborate on any steps as you desire.

41 President Knapp,

42 Okay. Lets do any quick questions we have for WSSC, and then we have, I think, four  
43 other groups to present. Chair of the T&E Committee, Councilmember Floreen.



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Councilmember Floreen,

First of all, thank you all for coming and for everyone's consistent responses to our questions about [inaudible] very helpful. And I think we -- it's been a great opportunity to sort out some things and to improve our communication and keep the public informed at the same time. We got a lot of pieces of paper on all this, but not a single piece addresses my question, which is why did this happen.

Teresa Daniell,  
Why did it happen?

Councilmember Floreen,

Why did this happen? Have we started thinking about that? I mean, we could say well we have a lot of infrastructure and we haven't kept it up to day, and so on. But has WSSC looked into -- examined what elements might have led to this problem?

Teresa Daniell,

In fact, we're in the process of doing that now. And I have said before our preliminary thought is that water seeped into the pipe, corroding the steel bands that reinforce the pre-stressed concrete pipe, and that's the kind of pipe it was. Which then of course led to the pipe being vulnerable to break; as you know it's only 38 years old.

Councilmember Floreen,

Well 38, to me, seems -- age-wise is like a child.

Teresa Daniell,

In pipe years, that's true, which of course makes it a surprise for us. You're not thinking in terms of a very old pipe or -- but -- we also talked before about how the simple age of a pipe isn't the only reason that a pipe ages.

Councilmember Floreen,

Clearly.

Teresa Daniell,

It's corrosion from water. It could be soil conditions. It could be perhaps the way the pipe was originally put into the ground; any kind of a design flaw. We have been looking at such things.

Councilmember Floreen,

So you're looking at that now?

Teresa Daniell,

Yes we are.



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1 Councilmember Floreen,

2 I mean I would very much -- and I'm sure WSSC Commissioners are very interested in  
3 this as well. But, gosh, that's the big questions it seems for us. How, you know, is this a  
4 message that we have to reevaluate some of our business practices, some of our  
5 engineering practices, and prioritize addressing them on a larger scale? You know, we  
6 understand we've got -- we all know we have infrastructure needs that we need to  
7 address, that we have pipes that need to be replaced; and we've had that exchange for  
8 some time over how we prioritize, how we fund all this. But a break like this, which is a  
9 serious regional issues, not just, you know, a small community, but a major regional  
10 issue with major economic implications for business and for residents in a very large  
11 and significant geographical area warrants, it seems to me, a really very thorough  
12 analysis of what are the pieces. I mean, that's your business, laying pipe, putting stuff in  
13 it and putting water through it. I mean that is sort of some of the fundamental elements  
14 of all this. And if there's something wrong with how we've been doing business, we can't  
15 do business as usual in the future. Can you -- you're looking into this. Can you talk a  
16 little bit about where you anticipate that would take you, and when you think you'll have  
17 some conclusions.

18  
19 Teresa Daniell,

20 I'm not yet ready -- yet ready to say what -- that we've found the problem or we know  
21 exactly what caused it.

22  
23 Councilmember Floreen,

24 Sure.

25  
26 Teresa Daniell,

27 As you said, we need to do a thorough analysis. I will say when we inspected the pipe  
28 and we were ready to repair it, we took the opportunity to inspect further along either  
29 side of the break, and, in fact, found four more areas that needed rehabilitation. So we  
30 did that at the same time that we repaired the actual break.

31  
32 Councilmember Floreen,

33 And that was close to the break?

34  
35 Teresa Daniell,

36 Yeah, between the two valves along the pipe that closed down.

37  
38 Councilmember Floreen,

39 Is that a big distance? I mean, are we talking like 50 feet?

40  
41 Teresa Daniell,

42 A mile.

43  
44 Rudolph Chow,





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1 The pipeline that was inspected off of the water main break was about two miles that we  
2 inspected. Within that two-mile stretch, we found four additional sectional pipes that  
3 need attention.

4  
5 Councilmember Floreen,  
6 Well that's a just -- .

7  
8 Teresa Daniell,  
9 I was going to say, of course, that is more information that tells us the break wasn't just  
10 at that one place; that there were others that were beginning to deteriorate or beginning  
11 to have problems. I don't -- as I said, I'm not yet ready to say this is the cause, or this is  
12 what we're looking at, because I don't want to be premature in having people -- and get  
13 the wrong information on what caused the break. But we're looking at all of those things.  
14 And we'll certainly let -- .

15  
16 Councilmember Floreen,  
17 It appears -- I mean, I would suggest to you that this is a matter of some exigency for us  
18 and for the Commission.

19  
20 Teresa Daniell,  
21 I understand.

22  
23 Councilmember Floreen,  
24 And a plan to evaluate the elements that led to this problem should take major priority at  
25 WSSC. Madam Chair, would you -- have the Commissioners had a conversation about  
26 this?

27  
28 Adrienne Mandel,  
29 Not only did we have a conversation, our Commission meeting -- monthly scheduled  
30 many years ago asked that our leadership staff come and give us -- and try to give us  
31 the same kinds of answers that you are seeking. And it was very interesting because  
32 our Interim General Manager and Deputy Interim General Manager came in with a box  
33 of show-and-tell. A beautiful box of concrete and wires and pebbles, and it was very  
34 interesting. And they did try to explain to us in lay terms because most of our  
35 Commissioners are laypeople, exactly what the potential causes might be. I mean, this  
36 was within two or three days after the break; was it not? It was very soon after the  
37 break. And what stuck in my mind from the briefing, because we requested the same  
38 kind of information as you're talking about today, was the fact that this particular pipe  
39 happens to lie in an area that's a very low, wet area. So the causes could possibly be  
40 attributed to the fact that there was water infiltration. But we don't want to go there at  
41 this point because it is premature, because a more thorough investigation is being  
42 conducted and you can be sure that your Commissioners are providing the appropriate  
43 recite, and we do feel the urgency to get answers.



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1 Councilmember Floreen,  
2 Well, Ms. Daniell, do you think you'll have a better sense by September?

3  
4 Teresa Daniell,  
5 Yes, I can commit to that.

6  
7 Councilmember Floreen,  
8 Okay, well, let me ask that you bring back to us, either the full Council or the T&E  
9 Committee, the results of your analysis. Obviously, if there are significant concerns  
10 there, you may -- you will want to reevaluate perhaps some of your CIP planning and  
11 other Operating Budget issues associated with this.

12  
13 Teresa Daniell,  
14 Right.

15  
16 Councilmember Floreen,  
17 In terms of evaluate -- you know, doing the kind of follow-up work that we would hope  
18 that you would be able to do throughout the system so that our -- everyone can be  
19 assured that we're doing our best to prevent reoccurrences, at least to the extent that  
20 we can anticipate with the information we've gotten.

21  
22 Teresa Daniell,  
23 Certainly that makes sense that not only would we be able to, I'm hopeful, to give you a  
24 cause and an analysis of how we found the cause, and then where do we go from here.

25  
26 Councilmember Floreen,  
27 Yeah,

28  
29 Teresa Daniell,  
30 Does that entail some sort of reevaluation of our planned work, any of those things.

31  
32 Councilmember Floreen,  
33 Absolutely. Sure, and let's take this opportunity to make sure we're in the right place.  
34 Okay, thank you.

35  
36 President Knapp,  
37 Councilmember Praisner.

38  
39 Councilmember Praisner,  
40 How many water breaks do you have, say, per day, per week, per whatever timeframe?

41  
42 Teresa Daniell,  
43 Rudy, can you give an -- just this morning I asked our Customer Care Team Chief to tell  
44 me how many breaks we had had to date in 2008, because -- one a day is probably not



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1 an unusual amount. You know, we get the alerts -- small breaks and some repeat  
2 offenders. You know, in other words, a line that has had more than a break over a  
3 period of years. I can certainly tell you that we had a record year in 2007, and a couple  
4 of those months in 2007 were record months; more than 2,000 breaks. Unfortunately, I  
5 can't you off the top of my head exactly how many we've had to date, but we have a lot.

6  
7 Councilmember Praisner,  
8 Yeah, I notice in my community you're out there at least once a day in some location.

9  
10 Teresa Daniell,  
11 Yes.

12  
13 Councilmember Praisner,  
14 Any idea as to what the major cause for a break is?

15  
16 Teresa Daniell,  
17 Aging infrastructure.

18  
19 Councilmember Praisner,  
20 Thank you.

21  
22 President Knapp,  
23 Councilmember Elrich.

24  
25 Councilmember Elrich,  
26 Piney Branch Road is probably on your list of frequent breakers.

27  
28 Teresa Daniell,  
29 Yes.

30  
31 Councilmember Elrich,  
32 I noticed it was blocked off again. Did you systematically go out and videotape the  
33 pipes? I mean, I assume you're putting something through the lines that you can inspect  
34 the pipes with, restraining order do you just -- are you just able to uncover the surface  
35 and do a surface exploration? I've seen those little robotic things that go through pipes  
36 and look at -- take pictures from the inside.

37  
38 Teresa Daniell,  
39 You'd be talking more about the sewer than the water lines.

40  
41 Rudolph Chow,  
42 Yeah, generally what you're talking about is closed-circuit television of pipelines, and  
43 generally that's done on sewer mains.



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1 Councilmember Elrich,  
2 You don't do it on the water mains?

3  
4 Rudolph Chow,  
5 We don't normally do it on water mains. And what you were thinking of that we do  
6 monitoring -- continuous monitoring of PCCPs using fiber optic cables and all that --  
7 that's not installed in this particular 16-inch main of Piney Branch.

8  
9 Councilmember Elrich,  
10 I was thinking more about the one that broke, the big lines. I mean, do you do an  
11 ongoing inspection?

12  
13 Rudolph Chow,  
14 For PCCP we have annual inspection programs that -- but clearly we're not doing  
15 enough in recent years, and we are stepping up in that effort.

16  
17 Councilmember Elrich,  
18 Because it would concern me that you have four potential in what a mile, whatever it  
19 was. And if all the pipe is the same age and same manufacturer, I mean, the fact that  
20 you showed four doesn't mean that others aren't in the stage of getting there and just  
21 simply aren't showing any signs of it yet. There's the issue of whether that same pipe --  
22 that same age pipe or type of pipe was used in other construction projects in the  
23 County, and I think you wouldn't want to limit yourself to just looking at this line, but  
24 asking whether is there -- are you using the same -- did you use the same materials in  
25 other locations. And it seems to me they all need to be candidates for investigation,  
26 particularly since you don't the cause. I mean, you said it may be water seeping in  
27 because it's a wet area. What if that's not the cause? Or if this isn't the only wet area,  
28 then you're vulnerable every place those pipes theoretically went in the ground. So I  
29 mean I would hope that you're actually looking at it in an aggressive way of monitoring  
30 the pipe situation.

31  
32 Rudolph Chow,  
33 Correct. I mean, currently we have two additional inspections going on for PCCPs, the  
34 large water mains, the 72- and the 66-inch water mains. And you're right, PCCP -- our  
35 focus has always been on the pre-1965 era of PCCP mains. And this particular one was  
36 manufactured in 1970. And I would say that's not very high on our radar screen in terms  
37 of vulnerability is concerned. But I light of this break, I think, that's part of the coming  
38 back to you in September our Interim General Manager was speaking of that we're  
39 going to be coming back and probably coming back with a new recommendation of  
40 expanded inspection program that we need to look into certainly.

41  
42 Councilmember Elrich,  
43 I'm concerned because when -- during the budget we were presented a not very pretty  
44 picture of the infrastructure needs of WSSC, and that didn't include this. And of course



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1 no steps were really taken to fund that because that's all about how much tax revenue  
2 can be raised to deal with the problem, and we have nowhere -- this Council supported  
3 the more aggressive program. But WSSC is nowhere near funding what it needs to do  
4 to deal with the problems that existed before this if, in fact, we've got a problem now  
5 with newer pipe, then the magnitude of the problem has just gotten a lot bigger. And I  
6 think it's incumbent on WSSC to do as much as they can to educate people of what it's  
7 going to cost to fix this, because we can't go through the -- obviously we did go through  
8 a water main break. But this is not the way to deal with things in the long term is wait for  
9 things to break and then do emergency repairs. At some point you're likely to be  
10 overwhelmed by your ability to deal with that. And I think the problem is a lot --  
11 apparently is bigger than, you know, even we thought about it when we were discussing  
12 your budget before. And I do think you're -- it's going to take a lot more resources to  
13 deal with the problem that's out there. We can't afford, for example, to have this -- the  
14 district situation of failing, you know, fire hookups. We need to know that the pressure is  
15 there and that it's going to be available throughout the County. And so, I guess, you  
16 know, I hope you do a much more aggressive inspection program, but I hope we start  
17 getting some realistic budgets and we continue to have realistic discussions about what  
18 it's going to take to deal with this. Because I don't sense that it's going to be cheap.

19  
20 Teresa Daniell,  
21 I appreciate your comments, and I think you're dead on.

22  
23 President Knapp,  
24 Just one brief question. At the County level we have an emergency operation center  
25 that gets activated depending upon the type of an incident occurs. Does WSSC have a  
26 similar activity that once you've got a special event that takes place; and, if so, do you  
27 have representatives from the key county departments or agencies depending upon  
28 where a break would occur or where an incident would occur that you would then call in  
29 or representatives would then participate in some centralized location with you?

30  
31 Teresa Daniell,  
32 We do have a similar -- it's not as formalized -- we don't have as formalized a control  
33 center call in like you're talking. Well let me rephrase that. We have a control center and  
34 it operates 24-hours a day; so we have a sitting, you know, control center. So that's one  
35 thing that's a little different versus one that's just stood up for emergencies if you will.  
36 And internal to WSSC, if need be we could call in certain staff who would then, you  
37 know, do coordination or take whatever actions that they need to have. We don't  
38 currently though have other representatives actually come to us. We do telephone  
39 conferences and meetings as needed. But we don't currently have a setup like that.  
40 That doesn't mean that we couldn't look at it and maybe set something like that up. But  
41 what I'm interested in is since you -- both counties now have this similar setup that we  
42 would figure out a way to increase our coordination so that whether we have actually  
43 have a seat at your table or there's some direct continuous link so you get updates from  
44 us on a continuous basis. Perhaps some sort of web-enabled -- I'm not sure, I'm talking



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1 off the top. But that's one of the things I meant in terms of refining our coordination  
2 process.

3  
4 President Knapp,  
5 Right.

6  
7 Teresa Daniell,  
8 I think we coordinated well, but you always look for how can I fine-tune this. Could I  
9 have -- could there have been a feed that I could have been continually giving -- given  
10 your control center that, you know, would have helped?

11  
12 President Knapp,  
13 Well, I think we tend to focus on something that happens within the County, and we'll  
14 engage our emergency operation center to respond to that incident. What if it's driven  
15 by -- you're the primary engager, and so we need to respond. And so how do we get to  
16 your table? I mean how do we drive off of your incident as opposed to the other way  
17 around. And so I don't the right way, but it would seem as though there might be as the  
18 course of this conversation proceeds, a level of communication that drive from that side  
19 as opposed to just from our own internal activities. Council Vice President Andrews.

20  
21 Vice President Andrews,  
22 Thank you, President Knapp, and thank you all for being here and for the detailed  
23 packet. In the packet there is an attachment A, which has a detailed timeline that  
24 appears very thorough of what happened from the time the break occurred over the  
25 next 48 hours or -- actually the next 70 hours or so. There are some references to the  
26 impact on hospitals in there, and I wanted to ask about that and ask how the  
27 communication was handled with hospitals; some were affected, others weren't. It notes  
28 that Montgomery General Hospital didn't have any water as of 10:05 or 10:04, and that  
29 there were -- was consideration or efforts made to find water for hospitals potentially  
30 evacuating hospitals with the National Guard. So take us through that.

31  
32 Teresa Daniell,  
33 Let me just say a couple of general comments, and then I'm going to ask Karen to  
34 elaborate. But, first of all, hospitals would be one of our critical customers, and so that  
35 would be -- as soon as we know the area that we have a water-main break and we start  
36 looking at who our critical customers are so that we can start notifying them, and then  
37 working with them on what needs, you know, they have, and what we can do to help.  
38 But I'm going to let Karen talk specifically about this incident since she was there and  
39 did the coordination.

40  
41 Vice President Andrews,  
42 Okay.

43  
44 Karen Wright,



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1 We were made aware that Montgomery General didn't have water. I told them there  
2 was no way that we could get them water. All the hospitals in this area, we did this  
3 many years ago where the hospitals were looked at, what they would do for backup  
4 water supply if they needed it. I informed Homeland Security that I did not know when  
5 we would be able to get them back in water, that they would have to do whatever they  
6 needed to do to protect the patients. And I told them which hospitals not to move people  
7 to; that they could also -- they would be in the same zone that was having pressure  
8 problems; and that even moving them to other hospitals in Prince George's and  
9 Montgomery County might be an issue depending on how long it took us to find the  
10 broken water main and isolate it.

11  
12 Vice President Andrews,  
13 Do any of our hospitals have backup water supplies?

14  
15 Karen Wright,  
16 I don't know. I know that some of them have a small tank. They tend to be more driven,  
17 I believe, based on having broken water mains in the wintertime, most hospitals have  
18 gone through have a dual feed so that if the break occurs on one side of the facility that  
19 they can get water on the other side of the facility. It does not consider that there could  
20 be just a total loss of water supply. When I talked to Bill Kelly with Homeland Security,  
21 he indicated that some of them had a small water supply but the biggest issue with the  
22 hospitals on that evening was the chillers with the air conditioning and maintaining a  
23 healthy temperature within the hospital itself.

24  
25 Vice President Andrews,  
26 Obviously this is critically important to have water available in hospitals. I note that at  
27 2:15 on Monday morning, which was about five hours after the break, indicates that  
28 Gordon Aoyagi, GA, informed KW, Karen Wright, that hospitals had canceled surgeries.  
29 Do you know which hospitals those were?

30  
31 Karen Wright,  
32 I do not know.

33  
34 Vice President Andrews,  
35 I'm sorry, it does say Holy Cross, Suburban and [inaudible] Medical said they were  
36 okay, so I assume it's Shady Grove and Montgomery General; although, I'm sure about  
37 Shady Grove. But this is an issue that I don't think has gotten a lot of focus, and it's one,  
38 I think, requires some follow-up with the hospitals to have plans for what they would do  
39 in an event of another loss of water, other than not having additional people come into  
40 the hospital, which makes sense. But what would they do in terms of being ready to  
41 bring water in case there was a cut off for more than a few minutes of water. So I  
42 appreciate the timeline noted this aspect of it, because I think that's an important one,  
43 and I think we'll need to follow up with that and meet the hospitals. I don't know if our  
44 Director has any comments she would like to make.



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1  
2 President Knapp,  
3 We'll get to that in a minute.

4  
5 Vice President Andrews,  
6 Okay, very good.

7  
8 Karen Wright,  
9 The difference in this was not -- it was not just water supply, but once the boiled-water  
10 advisory was called, then it took a different direction.

11  
12 Teresa Daniell,  
13 I would suggest that this could certainly be one of the follow-on meetings with the  
14 appropriate emergency departments and the hospital to review plans and see what they  
15 already have in place, and perhaps refine those.

16  
17 Vice President Andrews,  
18 Thank you.

19  
20 President Knapp,  
21 Great. Thank you very much for this panel. We've got three other groups to try to get to,  
22 and so don't run away because I'm sure there will be some overlapping questions when  
23 we get everything through. But thank you very much for the thorough response to the  
24 questions that you provided. And we look forward to continuing dialogue once we get  
25 through this presentation today. Our next brief presentation will be from Maryland  
26 National Capital Park and Planning Commission, the Department of Parks, Mary  
27 Bradford as Director, and Darien Manley, Acting Chief Park Police Division. This event  
28 did take place or this incident did occur on park land, and so there was a level of  
29 coordination that was required to occur there. And so just a brief overview as to how  
30 that occurred and what the follow up has been.

31  
32 Mary Bradford,  
33 Thank you, Mr. President. For the record, Mary Bradford, Director of the Department of  
34 Parks Montgomery County. Accompanying me is Acting Park Police Division Chief  
35 Darien Manley. And also I've asked to the table our Incident Commander for that event,  
36 Park Manager Kim Humerick. And at the end of the table is Doug Redman, who is in our  
37 natural resources unit and Park/Planning Stewardship, and responsible for the --  
38 assessing the effects on the park land itself. I just wanted to thank Jim and the Park  
39 Police for what they did to secure the location, work with WSSC, and make sure that the  
40 area was marked off and well-managed during the incident itself. The break occurred  
41 just below the parking lot for the Meadowside Nature Center, for those of you who know  
42 where the Lather B. Smith Environmental Center is, it's right on that same roadway off  
43 [Inaudible] Castor Mill Road. And so it was very close to an area used by the public  
44 while it was remote from the point of view of WSSC in that it wasn't immediately visible





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1 from a highway, for the purposes of park users it was in an area right off a trail that  
2 could have been accessed by anybody using that park. So the securing of the site was  
3 of importance to us. We found out about the break around 7:00 in the morning and  
4 immediately went out to the site to secure the site. Jim Humerick can address the  
5 details of how he did that. And the WSSC team was on the site, and we worked with  
6 them to make sure that the repairs they needed to make could move expeditiously. That  
7 meant getting in our foresters to take a look at the tree damage and figure out what  
8 could and couldn't happen on the site, and how we could get in there most easily;  
9 getting the proper materials down so the heavy equipment could access the site; and in  
10 general, working with WSSC to make sure they could start the repairs once the break  
11 had been found. We were very fortunate, I would say, in this County with that break.  
12 Where it occurred was within walking distance of a parking lot where we could drive  
13 heavy equipment in. If it had happened in a more remote area that would have been  
14 very problematic, I think, for everybody. Secondly, it occurred just upstream from Lake  
15 Frank, which meant there was a place for the water to go from this break. It was a  
16 significant break. Lake Frank rose almost four feet during the incident. And so there was  
17 quite a volume of water discharged out of this pipe flowing over park land very quickly  
18 into the stream and carried immediately down to Rock Creek. The distance it traveled  
19 over land did not affect park land the way it could if it had broken, as I said, in a more  
20 remote location. In terms of coordination, the coordination with WSSC was very good. I  
21 must commend their promptness, their attitude, their willingness to work with us, and all  
22 of our relationships with them on this incident. One thing you asked in the questions and  
23 one thing I was asked was what could have been done maybe differently. And I would  
24 say that one thing that might have helped a bit was in finding the initial break; I believe  
25 the order went out from the County to take a look at anybody noticing excessive stream  
26 discharge. I spoke with Gordon Aoyagi after the fact, and he said yes the call had gone  
27 out to County police. But generally the stream valleys in this County are within the park  
28 system, and so it might have helped to identify the location of the break perhaps if we  
29 had been able to get the word to our Park Police as well. And so our Park Police do  
30 have a 24/7 dispatch system, and had we been notified, we may have been able  
31 perhaps to have looked for it sooner and uncovered the location sooner than happened.  
32 President Knapp, I noticed your question about the coordination process and what we  
33 do internally. Generally speaking in an incident like that the Park Manager onsite were  
34 organized geographically. The Park Manager becomes the incident commander for the  
35 thing that's happening in that park, and that was Mr. Humerick. But we also have, as I  
36 said, a 24/7 Park Police dispatch system so we can get the word out very quickly to  
37 everybody and use our own internal alert. And that would be the way I would suggest  
38 we go in the future.

39  
40 President Knapp,

41 We've had conversations in the past on the Public Safety Committee as to better  
42 coordination between County Police dispatch and Park Police dispatch, and so I guess  
43 I'm a little intrigued as to a call going out to County Police for a significant incident that  
44 somehow didn't get transmitted to Park Police. Because I was under the impression that



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1 if there were a significant incident that there was a call that went out through dispatch  
2 that it went to all of the appropriate police personnel. And so I'm a little intrigued at the  
3 fact that something didn't get to you guys or that there's not already a linkage, because  
4 this is a major incident. If there were another major incident, at least as I've understood  
5 it, there's kind of a coordination there that you're in that loop and vice versa. And so  
6 does that not happen?

7  
8 Darien Manley,

9 In this instance, I'm not exactly sure where the breakdown occurred. We do have direct  
10 lines that are established between our communications center and the ECC. It's a very  
11 simple process for either side to pick up the phone and make the appropriate  
12 notification. In this case I believe the information went out over the County Police radio,  
13 and in most instances, our officers, because they monitor the county channels as well,  
14 we usually pick up on those things. In this case that did not happen. So our first  
15 notification was when Mr. Humerick contacted us at 7:00 that morning.

16  
17 President Knapp,

18 Okay. And that seems to me to continue to be something we need to look at then  
19 between County Police and Park Police to make sure that there's a strong, strong  
20 communication back and forth. I was under the impression that there was pretty much a  
21 seamless process; and it doesn't appear as though that's the case. Okay. Questions for  
22 Parks. Council Vice President Andrews.

23  
24 Vice President Andrews,

25 I'm sorry if I missed this, but is there an assessment yet in terms of the dollar cost to the  
26 damage to the park system?

27  
28 Mary Bradford,

29 We haven't completed an assessment of that at this point, but we -- WSSC paid for and  
30 took care of most of the work and the remedial work. We've had people out on site  
31 taking a look at that. And we can get you those figures if you need them.

32  
33 Vice President Andrews,

34 Okay.

35  
36 President Knapp,

37 Thank you very much. Thank you for your efforts and thank you for your  
38 responsiveness. I know it's difficult to bring all the pieces together, and so I appreciate  
39 that. And we're going to have continue to work on that communications link a little bit.

40  
41 Mary Bradford,

42 Thank you.

43  
44 President Knapp,



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1 Our next overview is Montgomery County Public Health with Uma Ahluwalia, Director of  
2 Department of Health and Human Services, and Dr. Ulder Tillman, who is the Public  
3 Health Officer, which is also a, interestingly, a state position. And so I have a feeling  
4 that Dr. Tillman got to serve as kind of the pivot point between both State Department of  
5 Health and County Department of Health, and how that interacted with everybody. Good  
6 morning. I don't care how we do this. I mean we had this laid out to go health, but do  
7 you want to?

8  
9 Tim Firestine,

10 We'll follow your order. Tom is going to say some -- Tom was going to maybe say  
11 something.

12  
13 President Knapp,  
14 Okay.

15  
16 Tom Street,

17 Good morning. Tom Street, Assistant Chief Administrative Officer from the County  
18 Government Executive Branch. We have today, of course, Tim Firestine, our CAO; Uma  
19 Ahluwalia, our HHS Director; Dr. Ulder Tillman, our Public Health Officer; Drew Tracy,  
20 our Acting -- our Assistant Police Chief; Darlene Flynn, Acting Director of Homeland  
21 Security; Tom Carr, Fire Chief; Bob Hoyt, our DEP Director; Dave Lake, our Manager of  
22 Waste Water Policy for DEP. I guess as an overview I think it's important that the  
23 Council remember that this really was an emerging event that different phases of the  
24 event involved different elements of an emergency. Certainly WSSC had the lead  
25 because it was a water main break of their system as water provider. The County role  
26 really was to coordinate the response in the departments in responding to the  
27 consequences of that break. And for the duration of time that it took to obtain potable  
28 water statement from the Commission. We've, I guess, prepared a number of  
29 responses to your question, and I think we'd like to go through those responses as a  
30 way to respond to you.

31  
32 President Knapp,  
33 Is that -- .

34  
35 Tom Street,  
36 HHS.

37  
38 President Knapp,  
39 Okay, Director Ahluwalia.

40  
41 Uma Ahluwalia,  
42 Good morning, President Knapp and members of the Council. We're pleased to be here  
43 today to speak with you about -- actually to respond to any questions you might have  
44 about the way the Public Health Department handled the boiled-water advisory and the



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1 related consequences of the water main break. We believe that our response was  
2 coordinated with the Department of Health and Mental Hygiene up at the State level,  
3 and with the County Executive's office. And every step of the way we were responsive  
4 to the issues that were emerging, especially with the restaurant owners and with the  
5 public. And we're happy to give you more detail than what was in our written answers  
6 about how we responded, particularly with the emergency control center that we  
7 established at Dennis Avenue, the number of calls we took, the actual in-person walk-  
8 ins, and knocking on the doors of restaurants and alerting them of the changes that  
9 were reported in their ability to do business. And Dr. Tillman was really at the center of  
10 all of that activity as the Public Health Officer for the County, and received her authority  
11 directly delegated from the Secretary for the State Department of Health and Mental  
12 Hygiene. So with that I'll stop and entertain questions.

13  
14 President Knapp,

15 You just mentioned this emergency control center that we had at Dennis Avenue. How  
16 was that different from what we would have from our typical emergency operations  
17 center, and why would we have a separate place set up for that?

18  
19 Dr. Ulder Tillman,

20 Public Health Services has a command post at Dennis Avenue that enables to activate  
21 an information hotline for our consumers, as well as for our medical health providers.  
22 And we have that funding that we've received via the Federal Government and the  
23 State to do that so that we would be prepared for biological emergencies. And that  
24 basically concentrates on the Public Health Services staff being able to respond to the  
25 public and providers, and then we link that to our emergency operating center where I  
26 usually sit if the OEC is activated.

27  
28 President Knapp,

29 Okay. So you're at the OEC.

30  
31 Dr. Ulder Tillman,

32 Right.

33  
34 President Knapp,

35 In direct contact with the folks at Dennis Avenue.

36  
37 Dr. Ulder Tillman,

38 Exactly.

39  
40 President Knapp,

41 Councilmember Leventhal.

42  
43 Councilmember Leventhal,



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1 What exactly was the threat to the water? Was it a combining of sewage lines with the  
2 water lines? And what are the medical consequences, or what were the potential  
3 medical risks.

4  
5 Dr. Ulder Tillman,

6 The concern that we had was that since the pressure had dropped so low and even had  
7 a negative pressure that it could be pulling in contaminants into what we call our potable  
8 water, which is water that is safe for drinking, for food handling and for cleansing.

9  
10 Councilmember Leventhal,  
11 Contaminates from the sewage lines?

12  
13 Dr. Ulder Tillman,  
14 No just from the environment around those pipes.

15  
16 Councilmember Leventhal,  
17 From the dirt in which the pipes are encased?

18  
19 Dr. Ulder Tillman,  
20 Exactly, yes. And so we do have concerns that we can't safeguard the quality of the  
21 water so that people needed to be sure that they took additional precautions for their  
22 own safety.

23  
24 Councilmember Leventhal,  
25 So then the medical risks were not really specific; it could have been anything?

26  
27 Dr. Ulder Tillman,  
28 It could be anything and it depends on where the break occurs. You know, if it's surface  
29 water then there is a concern about crypto-sporidium and giardia or parasites. If it's in  
30 contaminated ground areas where you could have fecal contamination from animals, et  
31 cetera, that is something that can be a threat to health as well. But we -- and particularly  
32 for individuals who are immune-compromised and are not at the best of health, they are  
33 more vulnerable to changes in the quality of the water.

34  
35 Councilmember Leventhal,  
36 So when the water is flowing through the pipes at a constant rate then just the motion of  
37 the water keeps the contaminants out; but if the pressure drops contaminants can seep  
38 in; is that what it is?

39  
40 Dr. Ulder Tillman,  
41 That's part of it. And also that, you know, the water supply company makes sure that  
42 there are a level of disinfectants that are in the water to make sure you maintain the  
43 quality. So if you can't maintain the pressure as well as the quality of the water then that  
44 makes us vulnerable to potential contaminants.



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1  
2 Councilmember Leventhal,  
3 And there's a wide range of potential contaminates; it's not just one or two?

4  
5 Dr. Ulder Tillman,  
6 There are.

7  
8 Councilmember Leventhal,  
9 Thank you, that's very interesting.

10  
11 President Knapp,  
12 Councilmember Elrich.

13  
14 Councilmember Elrich,  
15 Is there any value in looking at any kind of filtering systems at the hospital so that if you  
16 did have a breakdown like this that the contaminates could be removed and the water  
17 supply could be maintained at the hospitals. I mean, I know that if you -- in the simple  
18 world, if you go out camping and you can buy relatively easy things you put your water  
19 through it and you drink it, and you don't worry about all the things you just listed. It is  
20 possible to have a bypass system at hospitals that would provide some backup safety  
21 for them.

22  
23 Dr. Ulder Tillman,  
24 There have been some discussions during this event and actually several years ago in  
25 terms of what could be alternatives for the hospitals. You know, the hospitals are  
26 particularly challenged that they need a large volume of water as well as the quality of  
27 the water. We had a lot of discussions during this incident in terms of what could  
28 happen with dialysis and with surgery, and it was really deemed that it was safer to  
29 postpone those or to route people to other areas rather than to risk that. My  
30 understanding is a couple of years ago the hospitals did engage a consultant to look at  
31 alternatives. But it would still be -- we're talking about things that are relatively  
32 expensive for them to institute. And you have one hospital such as Montgomery  
33 General where they would really need a water tower which could draw some potentially  
34 negative reactions from the surrounding community for them to have that backup water  
35 supply. So it's not a quick fix for the hospitals. They need the volume and that's why  
36 after my conference call with that State on that Monday morning about 6:00 a.m., MIMS  
37 and a number of other State agencies arranged to have the water tankers to be going to  
38 the two hospitals that were affected.

39  
40 Councilmember Elrich,  
41 Thank you.

42  
43 President Knapp,  
44 Council Vice President Andrews.



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1  
2 Vice President Andrews,  
3 Thank you. Which hospitals did cancel surgeries and for how long?

4  
5 Dr. Ulder Tillman,  
6 The first hospital that was affected was Montgomery then it was Shady Grove, Adventist  
7 Hospital, and then the Germantown emergency facility that were affected. The  
8 Germantown emergency facility that was not paramount situation for them, but for  
9 Montgomery General, for Shady Grove, they were affected, and they continued that  
10 delay in scheduling elective surgery until the boiled-water advisory was lifted.

11  
12 Vice President Andrews,  
13 So about three days.

14  
15 Dr. Ulder Tillman,  
16 Yes.

17  
18 Vice President Andrews,  
19 All right. Do you know what accommodations, if any, were made for those needing  
20 immediate surgery?

21  
22 Dr. Ulder Tillman,  
23 No, but I do understand in the discussions that I had with the State and MIMS that they  
24 were discussing about various diversions that would be necessary, and what type of  
25 diversion and what other hospitals would take those emergencies. So that was  
26 something that was discussed early on in this event in terms of those arrangements.

27  
28 Vice President Andrews,  
29 Okay. We may need to follow up with the hospitals I think to get more details on that.  
30 Thank you.

31  
32 President Knapp,  
33 From what I saw in the packet there was a coordination between MDE, Department of  
34 Health and our Department of Health and Human Services and WSSC as to who made  
35 what calls that related to the boiled-water alert and ultimately the closing of the  
36 restaurants. Could you explain how that interaction takes place and where that  
37 interaction took place?

38  
39 Dr. Ulder Tillman,  
40 Well, clearly in terms of public water supply it's the Maryland Department of  
41 Environment that has regulatory authority over them, and they have the regulations  
42 where they have primacy for the water and the quality of the water. They were in  
43 consultation with WSSC and that decision was made by them, and it was WSSC that  
44 issued it.



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1  
2 President Knapp,  
3 That's to the boiled-water alert, so between -- .

4  
5 Dr. Ulder Tillman,  
6 Advisory, yes.

7  
8 President Knapp,  
9 Or advisory, sorry. [Inaudible] language.

10  
11 Dr. Ulder Tillman,  
12 But now in terms of our food service facilities, it's the Secretary of the Department of  
13 Health and Mental Hygiene who has authority over that. And we learned during this  
14 event that that actually has been delegated to the county health officers to make the  
15 decisions about closures for the restaurants. So after quite a bit of consultation on that  
16 Monday late afternoon into the evening it was decided that it was safer to make sure  
17 that those food service facilities remained closed until we could propose if at all possible  
18 other alternatives.

19  
20 President Knapp,  
21 It was decided by whom?

22  
23 Dr. Ulder Tillman,  
24 It was ultimately my decision.

25  
26 President Knapp,  
27 Okay.

28  
29 Dr. Ulder Tillman,  
30 The Secretary strongly advised that we close the food service facilities, but it was my  
31 decision.

32  
33 President Knapp,  
34 So how does that then play into our emergency operations center or the program we  
35 have at Dennis Avenue to communicate with folks. Does that decision then go back to  
36 the emergency operations center and then our incident command team is then  
37 responsible for communicating, or does that come out because you kind of fall outside  
38 that chain of command as a state official as well; does that then go to the Dennis  
39 Avenue facility and then that whole communication system takes place?

40  
41 Dr. Ulder Tillman,  
42 We had really a multi-prong situation going that with the activated emergency  
43 operations center with our County Homeland Security that already a public advisory had  
44 been issued to the media early in the morning. When it came to the restaurants





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1 specifically then it was Public Health that needed to provide what information needed to  
2 get to them. And so we did use our various media with the radio with the TV and with  
3 the County website, and then with actual direct phone calls from our hotline as well as  
4 our Licensure and Regulatory staff to get to those restaurants -- food service facilities.  
5 We had also, by the way, needed to check with our nursing home residential facilities to  
6 make sure that they were okay as well, so we addressed that also.

7  
8 President Knapp,

9 So of our 1200 restaurants or so that was affected, how many do we think we actually  
10 got in touch with?

11  
12 Dr. Ulder Tillman,

13 We reached 870 of them on that first day and about the same amount the next day.  
14 That's just through the phone calls. And then on the next day we also sent out  
15 inspectors and volunteers to deliver those written notices in hand to the affected areas.  
16 Our greatest problem actually was in the beginning we did not know the perimeters of  
17 the affected area. So it wasn't until after 2:30 p.m. on that Monday on the 16th that we  
18 knew what area was affected. And then we had to do the where are the restaurants  
19 within that area.

20  
21 President Knapp,

22 Councilmember Leventhal.

23  
24 Councilmember Leventhal,

25 Yeah, it would to me -- perhaps you're already working on this and it's sort of an intern-  
26 type task, but developing a better database with more comprehensive information of  
27 restaurants. It may very well arise in the future that we'll need to alert all of our  
28 restaurants, and like I say, maybe you have an intern who could assist in this. But just  
29 getting on the phone with every restaurant in the County and saying we need your email  
30 address, we need to know your zip code, we need to know your precise location, you  
31 know, in case we have an emergency in the future and we need to get a hold of you  
32 right away. The best way to do it would be a blast email; everyone is on their email all  
33 the time and it would have been better than phone calls. So it's just something to think  
34 about as how to assemble that. Hopefully it's not a -- we don't need to have a very  
35 highly compensated staff person to do it.

36  
37 Dr. Ulder Tillman,

38 That was clearly a lesson learned, and we actually found that the restaurants or food  
39 service facilities preferred the phone calls, and that that was more effective for them.  
40 We have and are in the process of updating our inspection forms as well as our  
41 licensure application forms to make sure that we have an after-hour emergency contact  
42 number for the restaurants, because that's the problem. We usually just have their  
43 daytime business number, but we needed to know how to reach the operators after  
44 hours. So we have taken that into account and we're in the process of doing that.



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1  
2 President Knapp,  
3 Okay. I don't see any other questions on the health side. Mr. Street, do you have further  
4 from -- ?

5  
6 Tom Street,  
7 I think the next one would be to address your reverse 9-1-1 questions, and we have  
8 Drew Tracy.

9  
10 President Knapp,  
11 Okay.

12  
13 Drew Tracy,  
14 President Knapp, Councilmembers, good morning. Drew Tracy, Assistant Chief of  
15 Police. I guess -- would you like me to [inaudible] any questions or would you like to ask  
16 me some questions?

17  
18 President Knapp,  
19 Well, I think the question that arose is one of broader communication, and how do we  
20 get specific information out to individual homeowners or individual properties in an  
21 expeditious way. In the packet it talks about reverse 9-1-1 system the entire region has  
22 access to on varying scales of accessibility. Most of us who are parents who have  
23 children in Montgomery County Public Schools know that there is an alert system that I  
24 get a blast phone -- a phone message from -- voicemail message from the principal  
25 almost weekly on various issues that are affecting the local school community. So the  
26 technology is there, and so I guess the question is does -- how do we deploy or employ  
27 such a technology to actually communicate more effectively without our residents in the  
28 event of an incident?

29  
30 Drew Tracy,  
31 I think the answer to your questions is reverse 9-1-1 is a communication tool and it's  
32 one of many tools. Obviously with us today we had the media, which is probably our  
33 greatest tool. And I think we all know that here today. Reverse 9-1-1 was put into  
34 County use basically at the later part of 2007. It was an NCR grant, which is National  
35 Capital Region, where Gordon Aoyagi and others looked for grant money to utilize  
36 communication interoperability situations. Us, Fairfax County, D.C. and everything else  
37 got a grant up to 120,000 to utilize this product. Basically the product we have is good. It  
38 can get a message out. We have 32 lines, and basically a 30-second message -- I think  
39 you've read this -- we can get close to 3,000 messages out in one hour. To go County-  
40 wide we have to go with an outside vendor and it could be at a cost to the County of  
41 over 200,000 if we want to notify everybody. Now there's the word notify. We have  
42 DVDs and information that can get to basically landlines; we do not have the information  
43 to get to cell phones. I think we all know here basically we live in a cell phone world. So  
44 this information would not go to a cell phone, it would go to basically a landline. But we



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1 do have the capability. If you ask my opinion, I think it's good in smaller situations where  
2 you have to get a message out to a small zip code or a small neighborhood. I think  
3 that's where it's best used. The Department of Homeland Security has the ability  
4 obviously to utilize and we're working with Darlene now to give them more access to do  
5 that. In the police department we have originally seven people trained to get this  
6 information out. And like I said, it just came up to be at the end of 2007. So I think it's  
7 good in a smaller venue, and I think it's a tool that could be used.

8  
9 President Knapp,  
10 So \$200,000 would cover virtually all of our individual households?

11  
12 Drew Tracy,  
13 Yes, and that's landlines we're talking about.

14  
15 President Knapp,  
16 Right.

17  
18 Drew Tracy,  
19 Because basically I can give you the exact dollar amount. It costs us approximately  
20 \$48,000 per hour to get 240,000 calls at 30 seconds, which would be a cost to the entire  
21 County in five hours of \$240,000 from an outside vendor to get a message out  
22 countywide to landlines only, which is both commercial as well as residential.

23  
24 President Knapp,  
25 [Inaudible] expensive.

26  
27 Tom Street,  
28 Mr. Knapp, if I may also add the Executive staff is also looking at other alternatives,  
29 better tools; 9-1-1 is a very blunt tool for this kind of wide area emergency use. And we  
30 are investigating the availability of other technologies to -- and probably be coming back  
31 to the Council later for that.

32  
33 President Knapp,  
34 And what's the timeframe in which you would hope to have that assessed?

35  
36 Tom Street,  
37 I would say within the next two or three months.

38  
39 President Knapp,  
40 I agree. I think there [inaudible] instrument. By the same token it has had very effective  
41 utilization in other parts of the country for incidents. And I think the issue that came up  
42 was we don't want to scare people, but I think it is also a very effective tool to  
43 communicate a message. It doesn't have to be an emergency message; it has to be an



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1 important message that you need to try to get out to folks. And if we can refine that and  
2 use better technology, so much the better.

3  
4 Tom Street,  
5 Right.

6  
7 President Knapp,  
8 Mr. Elrich.

9  
10 Councilmember Elrich,  
11 What did you say the cost per call was?

12  
13 Drew Tracy,  
14 The cost per call?

15  
16 Councilmember Elrich,  
17 Yeah.

18  
19 Drew Tracy,  
20 No basically -- 20 cents.

21  
22 Councilmember Elrich,  
23 I guess it makes me wonder because any of us who have done political campaigns the  
24 robo-calls that people know and love cost between 3 and 5 cents a call. So -- .

25  
26 Drew Tracy,  
27 Remember, it's 20-cents if we go outside our capabilities. If it's inside our capabilities -- .

28  
29 Councilmember Elrich,  
30 I'm talking about like robo-calls where you hire somebody, you tape the message, and  
31 they then blast everybody you've put on the list for between 3 and 5 cents. So if  
32 politicians can made obnoxious calls for 3 to 5 cents a call, I would think that you could  
33 do emergency messages for 3 to 5 cents a call. I mean, could we look at this, I mean, at  
34 how this done for politicians who make these all the time?

35  
36 Drew Tracy,  
37 Sure. I don't see any reason not to look at [inaudible].

38  
39 Councilmember Elrich,  
40 That's a lot of extra money, and you could certainly expend -- .

41  
42 Drew Tracy,  
43 If we can save money we'll look at it; trust me.



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1 Councilmember Elrich,

2 It would easy to expand the universe of who you're calling that way also, because you  
3 would just give people the list of, you know, households or whatever and say call away.  
4 And I just -- it just seems like your spending more money than any of us would spend to  
5 do that, for something a lot more important.

6  
7 President Knapp,

8 But we didn't spend it.

9  
10 Councilmember Leventhal,

11 Mr. Elrich, you run unusually cost-effective campaigns.

12  
13 Councilmember Elrich,

14 This is true, but some of my opponents don't and it still gets the message out.

15  
16 President Knapp,

17 I guess the only follow-up I would say is that we talked about the fact that this was a  
18 costly intervention, I think at 20-cents a household if we have significant information that  
19 needs to get out that doesn't seem to be overly costly if we actually have a message  
20 that we need to get to our residents. That would be my only observation.

21  
22 Tim Firestine,

23 But remember it's not just the cost; it's the timeframe for getting that message out. It's a  
24 slow tool to get the information out. So that's why I think our point is we want to look at  
25 what other tools are out there. There are others who have tools that might be much  
26 more precise but also more timely in getting the word out if we use this as a tool. I mean  
27 some of the things that reverse 9-1-1 only hits landlines that people who are on cell  
28 phones it would not get. There are other tools, for example, I think the Fire Chief  
29 indicated there's a tool now that would sort of blast out from a cell tower that all those  
30 cell phones that are on that tower, you know, get the message. So we think there are  
31 other more effective ways of doing this than [inaudible].

32  
33 President Knapp,

34 I don't disagree. I would urge us to look at all of them. Okay, other questions for reverse  
35 9-1-1? I don't see any. Okay, thank you, Chief.

36  
37 Tom Street,

38 Then going to your last question in your package who is in charge now that Mr. Aoyagi  
39 has retired. Darlene Flynn is our Acting Office of Homeland Security Emergency  
40 Management Director. We are currently recruiting for a Director for the office. We have  
41 completed our advertisements. We are currently screening resumes and planned  
42 interviews shortly.

43  
44 President Knapp,



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1 Great. Okay. Good. I think that -- I don't see further questions from Councilmembers. I  
2 think that kind of gives us the overview of where we're trying to look to get to. And I  
3 think one of the things that came through very well in the packet, and I think in further  
4 conversations came out very clearly is the nuts and bolts of what needed to get done  
5 got done. I still think there are questions as to the broader communications and we  
6 need to figure out how to improve upon that, at least from sitting on this side of the  
7 table. And be it different technologies from reverse 9-1-1, but looking at ways to make  
8 sure that we get as broad a message out as quickly as we can. The one thing that I --  
9 and I commend our county departments and agencies and WSSC and others, because  
10 it looked like their actual response to the incident took place in a fairly timely fashion  
11 and things got addressed. And obviously there's more coordination that we can do and  
12 there will continue to be, and I think that's good. The one piece that I guess you said at  
13 the beginning of your remarks, Mr. Street, and I'm kind of intrigued; yes, it was a WSSC  
14 incident, but it was WSSC incident in Montgomery County, which at the end of the day  
15 means it's our job to make sure that we're interacting with our residents and making  
16 sure [inaudible]. And that's -- other may have had the primacy for the issue, but they're  
17 still our residents and we're responsible and accountable to those residents. And we  
18 need to make sure that we step up to the plate. So I don't think we can kind of look in  
19 another direction and say well that was their incident. It's here. It's our residents. It's our  
20 residents' health and welfare.

21  
22 Tom Street,  
23 I don't disagree with you. And I think there are some lessons learned and certainly in  
24 terms of interagency coordination and the establishment of [inaudible] an incident  
25 command and tying into our EOC. We need to -- we plan to have discussions with both  
26 Park and Planning and WSSC for how to remedy some of the issues that arose.

27  
28 President Knapp,  
29 Okay. Good. Well thank you -- I don't see further questions from Councilmembers.  
30 Thank you all very much for the time, thank you for the response. There will continue to  
31 be some follow-ups as this resolves itself. But I thank everyone and I appreciate the  
32 efforts.

33  
34 Unidentified,  
35 [Inaudible].

36  
37 President Knapp,  
38 No, no that's okay. You had pointed to Tom so I thought he was the spokesperson for  
39 the day. I'm sorry, Mr. Firestine, go ahead.

40  
41 Tim Firestine,  
42 I just wanted to -- .

43  
44 President Knapp,



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1 Mr. Firestine, turn on your microphone.

2  
3 Tim Firestine,

4 Just a couple of summary points to close out. First, I -- having watched the incident, I  
5 think you should be proud of the staff, not just from the County Government, from all the  
6 County agencies and their dedication to step up to the plate to deal with the issue. And I  
7 think relying on them in the future is very important. You know, we had staff, you heard  
8 about the hotline at HSS -- staff that worked very hard, you know, throughout the day to  
9 get the word out to restaurants. The next night they were back at 5:00 a.m. in the  
10 morning, you know, manning or staffing the hotline again to answer questions coming in  
11 from restaurants. And, you know, their willingness to do that makes us, I think, proud of  
12 the fact that we have staff that are willing. In terms of what went right, I think just to  
13 summarize, the fact that we quickly focused on the places we were most vulnerable I  
14 think is also a good indication that we were ready for this type of incident. For example,  
15 the immediate focus on places where we were vulnerable because of a lack of water.  
16 Fire, you know, they were working early on this event. I know Tom Carr is here. But they  
17 immediately moved to put into the rural water supply response, which started to position  
18 water at various locations in the area to make sure that we could continue with fire  
19 suppression were it necessary, and immediately put in a mutual aid relationship with  
20 Howard County to help in the event that fire suppression was necessary. There was a  
21 quick coordination and communication with the hospitals, starting with Montgomery  
22 General, to position the tankers there at the hospital to help with the water-related  
23 issues there, both supply and keeping the temperature within the hospital, you know, to  
24 a temperature that was acceptable. The other thing, we don't talk about this, but since  
25 the firefighters have to operate, they quickly positioned water at the fire stations for  
26 drinking, and also port-a-potties for the fire/rescue stations; but immediately moving into  
27 that situation. Also, quickly the shelter taskforce -- we didn't to talk about this really  
28 today, but monitoring of our medically fragile population occurred almost within the first  
29 12 hours immediately. One of the first places there was a focus on was nursing  
30 facilities, assisted-living facilities, and HOC to basically assess their water inventory,  
31 make sure they had water -- bottled water and that they were using it. And that occurred  
32 between 5:00 a.m. and 8:00 a.m. on the first morning. Also, you talked about hospitals.  
33 There was good coordination with the Maryland Institute for Emergency Medical  
34 Services regarding hospital issues, short-term and long-term as we continued through  
35 the boiled-water advisory; sharing information among the different parties on how they  
36 were responding. A simple thing within the County but procurement of water for County  
37 facilities; we discovered that Liquor Control has access to water -- quick access to  
38 water and can get that distributed, which in terms of distribution that's what they do.  
39 Their [inaudible] competency, so in the future rely on them to help with that was also a  
40 lesson learned. I think with respect to our correction facility that there was a lack of  
41 water for the period. They quickly responded to that, but I think in terms of planning for  
42 the future we have to make sure that we have more bottled water positioned there. We  
43 talked about Public Health and the hotline that they set up. Again, I think the dedication  
44 there and the fact that we were able to get the word out the way we did to the



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1 restaurants was commendable. On the lessons-learned side, just to summarize quickly,  
2 and it's been said many times today. In an incident like this what we all learn is that  
3 communication and coordination are the places we can't do enough of. And that's both  
4 internal and external. Internally within the County Government, internally among  
5 agencies serving County residents, and internally between -- I call this internally, but  
6 internally between the State and the County; and then also, obviously, externally to the  
7 community, both residents and businesses. Within the County Government I just want  
8 to mention one of the things I think we learned -- this is a lesson learned -- was  
9 communicating with our employees about closures and the events that are occurring.  
10 We need to do a better job of that; getting email word out to them, set a place where  
11 they know to go to, to find out if their facility is closed. But also, you know, they can be  
12 our eyes and ears in the community. They can help get the word out because, you  
13 know, they work in the County Government. Among agencies, you've heard today some  
14 sort of places where we need to improve our coordination among, perhaps, WSSC and  
15 Park and Planning. And Tom mentioned I think looking at this ECC relationship.  
16 Whenever an ECC communication goes out if we have to rely on somebody to pick up  
17 another phone to make a call, I think that's a weak link. And so I've talked Mary  
18 Bradford about what is the possibility of having them dispatch from our ECC then they  
19 would have gotten the word immediately. Between the State and the County, I think  
20 what was interesting to me is we were sort of looking at who has authority to make  
21 certain decisions. So for the future I think we need that spelled out immediately so that  
22 when an event occurs we know who has authority to make what decisions. And if those  
23 authorities can't be delegate that we understand that the delegation has occurred or is  
24 in place so that we can act without trying to find somebody from the State. One of the  
25 things I don't know if you picked up, State Testing Protocols, I thought was an  
26 interesting issue that didn't come up in our discussion today. But early on we thought  
27 one round of tests was enough, and then late in the game we heard from the State that  
28 it was two consecutive rounds, which had a major impact on our schedule of what we  
29 were rolling out to the restaurants. And also I think preplanning on these type security  
30 officer issues where other parts of the country experience these events, it's nice to just  
31 understand best practices. You know, Florida goes through a lot of boiled-water  
32 advisories, and we -- our staff reached out and found some good information from that.  
33 We've talked a lot about our external communications to the community. I want to sort  
34 of second what Drew said. The media is a good source to get out the word. I think we  
35 need to work more closely with them earlier. My story is I got called at 3:00 a.m. about  
36 what was going on, and I turned on WTOP and what was fascinated with was at that  
37 point in the morning they had the same information that I was getting from the EOC. So  
38 someone was at that point keeping them up to date. Whether we did that more  
39 effectively as we went throughout the day I don't know. But we need to work on that.  
40 Also we talked about internal procedures for more effective use of Alert Montgomery.  
41 And we also mentioned better information -- or better ways to contact businesses in the  
42 County. So we will work on that. In addition, two other quick areas where we've --  
43 lessons learned. Certain technical capabilities; we absolutely need better tools to  
44 communicate precisely with impacted populations. And we know that. And we talked





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1 about that. I'm not going to do that again. Better mapping tools and more people trained  
2 to use them. You know, there are mapping capabilities out there, as you heard Dr.  
3 Tillman say, it was difficult, you know, even once you had a defined map, the tools that  
4 we had available to print maps out to sort of define the areas, define the phone  
5 numbers; that took too long. We need to fix that. And then finally EOC protocols; I think  
6 one of the things we need to go back and reinforce is who sits there, how do they get  
7 notified, especially when it occurs during the nighttime hours. And finally, closing time  
8 on the EOC; one of the things I think we did this time is perhaps close the EOC too  
9 soon. So we've talked about a protocol to have departments sign off on the closing time  
10 to make sure that everybody feels comfortable that there isn't a need to go back to the  
11 EOC for help. So we will work on these improvements and probably would be important  
12 for the Council at some time in the future, and we can talk about a date to follow up to  
13 see how we're doing on these things.

14  
15 President Knapp,

16 Very good. Comments engender to question. Councilmember Berliner.

17  
18 Councilmember Berliner,

19 Tim, the issue that came up for me, and I'm sure many people when this episode  
20 unfolded, wasn't what it means in terms of this particular episode, but what would it  
21 mean if this was something quite substantial. In this instance it was, from my  
22 perspective, somewhat limited in scope, somewhat limited in terms of its potential harm,  
23 but there are a lot of things that could happen that far exceed this situation. You  
24 referenced looking at certain authorities that you didn't know if they were delegated to  
25 the County versus the State. Could you expand upon that and talk about those  
26 authorities and what you were referring to specifically.

27  
28 Tim Firestine,

29 Well, for example, on the issue of closing the restaurants. I think at first it was -- there  
30 were a number of us asking the question who had the authority. Now Dr. Tillman, you  
31 know, was pretty clear on that, but at first we were told that the State -- it's a decision  
32 that the State makes. And the County Executive actually got the Secretary on the phone  
33 and just clarified that he had made this decision to close County restaurants, at which  
34 point the Secretary said, you know, I need to discuss that and we'll call you back. And  
35 we got a call back saying that actually he was delegating that to the County, but he was  
36 advising the County that we close the restaurants. That's what I mean by clarifying  
37 [inaudible].

38  
39 Councilmember Berliner,

40 Are there other examples that would be more applicable to a larger incident that you are  
41 concerned about with respect to the delegated authority?

42  
43 Tim Firestine,



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1 Well, I -- no, but that's what we need to look at. You know, and it's always hard to define  
2 what that event might be in the future where State authority is required. But I do think  
3 it's important to try to think that through.

4  
5 Councilmember Berliner,  
6 I appreciate that. Thank you.

7  
8 President Knapp,  
9 And I guess to that point too, we do have, I don't know, voluminous list of protocols that  
10 the Council has approved that you're going to [inaudible] the Executive that we have  
11 internally that also point to how we work outwardly. I guess we need to go back and  
12 revisit those a little bit and just kind of see, because it was my understanding that we --  
13 even to the closing of the EOC, I was under the impression that we actually had a pretty  
14 specified closing procedure as to how we do that. And so if those things are in question,  
15 yes it would seem we need to get those resolved.

16  
17 Tim Firestine,  
18 Sure, I agree.

19  
20 Unidentified,  
21 It's more of a broadening of that so that there's more involvement from Parks in that  
22 decision.

23  
24 President Knapp,  
25 Councilmember Elrich.

26  
27 Councilmember Elrich,  
28 Yes, I just want to make two quick comments. One is I think that overall everybody  
29 handled the emergency really well. I mean, I think that what got lost in the concerns  
30 about some of the communication was the fact that the problem got identified and fixed  
31 pretty quickly, and that those aspects I thought were done really, really well. And the  
32 coordination and the work between everybody was, I thought, outstanding in that  
33 regard. So you learned some lessons and there are clearly some things that didn't work  
34 as we planned, but I think by and large this was more of a success than it is anything  
35 else as much as dealing with the failure is a success. I wanted to repeat a comment I  
36 made in committee. And I talked with Ms. Flynn yesterday about this is the realization  
37 that not everybody gets information out of the electronic media. And I point this out  
38 because I had friends who drank the water and were in the areas that were where they  
39 weren't supposed to drink the water. And if you get your music out of your iPod, so  
40 you're not on the radio, and, you know, you're surfing the web and maybe you're going  
41 to AOL but you're not going to news sites, you could have missed this event. And so I  
42 do think we need to think about a way, more old-fashioned way of being able to post  
43 information that's visual and visible to people as they drive down the street. I mean, we  
44 discussed the possibility of the old-fashioned board outside of a fire station. The public



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1 schools that have those announcement boards and their little marquees on the front of  
2 the school might have been easier to put down, you know, Montgomery County or this  
3 part of the County is under a water alert, please contact. I think there are some ways  
4 that we could have gotten the information out that would have increased accessibility to  
5 people who really weren't tuned in to the electronic media. And that was just my  
6 observation, and I hope we'll think about that aspect of communication as well as our  
7 emphasis on the electronic side of things.

8  
9 President Knapp,

10 I see no more questions. Thank you very much. Thank you for the overviews. Thank  
11 you for the presentations. And we'll look forward to the continuing dialogue as we make  
12 our modifications and refinements and learn what we can learn. Thank you very, very  
13 much. The Council will now turn to Legislative Session Day # 23. Madam Clerk, is there  
14 a Journal to -- don't have Councilmembers to approve -- I do.

15  
16 Mary Ann Paradise,

17 Yes, you have the Journal of June 17th for approval.

18  
19 President Knapp,

20 Is there a motion to approve the Journal of June 17th? Anyone?

21  
22 Councilmember Elrich,

23 Yes, sure.

24  
25 President Knapp,

26 Moved by Councilmember Elrich. Is there is a second? Say yes.

27  
28 Councilmember Praisner,

29 Second.

30  
31 President Knapp,

32 Seconded by Councilmember Praisner. All in support of the Legislative Journal of June  
33 17th please indicate by raising your hand.

34  
35 Councilmember Berliner,

36 I'm raising my hand.

37  
38 President Knapp,

39 I see hands. There we go, slowly but surely. It's unanimous among those present.  
40 Okay, thank you all very much. Okay. We have no Bills for introduction. We turn to call  
41 of Bills for final reading. Bill 2-08, Consumer Protection, Domestic Workers,  
42 Employment Contracts. The Public Safety Committee recommends approval with  
43 amendments. I turn to the Chair of the Public Safety Committee, Council Vice President  
44 Andrews, to lead us through the discussion.



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1  
2 Vice President Andrews,  
3 Thank you, President Knapp. And the packet is before the committee as is the Bill for  
4 the Council. We had a Public Hearing on this Bill in February, February 26th, and the  
5 Public Safety Committee had three work sessions, in March, April and late last month,  
6 June 26th. And the packet is very thorough. I think our Council Attorney working on this,  
7 Robert Drummer, did an excellent job in laying out the issues and doing a lot of  
8 research on this. And there were a lot of questions that we wanted to address. The  
9 background of this is that two years ago, in 2006, a study that was sponsored by the  
10 Council's Committee on Health and Human Services was done by the George  
11 Washington University Master of Public Policy candidates, looking at working conditions  
12 of domestic workers. And the graduate students surveyed approximately 300 domestic  
13 workers in the County. And the results of the survey are on page 2 of the packet,  
14 basically showing that domestic workers make low wages, rarely receive overtime or  
15 health insurance, and because of the nature of the work they're generally isolated from  
16 other workers. The gist of the Bill is to work to get before both the employer and the  
17 domestic worker the terms of the employment relationship, and to require that there be  
18 a contract put forward, a proposal -- an offer put forward in writing by the employer that  
19 spells out the terms of the employment in terms of what they would be. The Bill does not  
20 require what the wages would be, what the specific elements would be in terms of the  
21 details, but it requires that a long list of employment issues be discussed by the  
22 employer and by and considered by the domestic worker. And that is essentially what  
23 the Bill does. In terms of the issues that are before -- were considered by the committee  
24 and that are before the Council, I think I will go through each one as they are in the  
25 packet, and take questions as we go through them. And so beginning on page 2 was  
26 the issue of who is the employer of domestic worker under the Bill. And there are three  
27 scenarios for that. The worker may be an employee of a company that contracts with  
28 the client and that would be covered. The second -- another scenario -- a second  
29 scenario is the worker is performing more than the 20 hours of domestic service that's  
30 the threshold in the Bill for triggering this for more than a 30-day period. And that work  
31 would be covered if there is an employee/employer relationship. And the other scenario  
32 is if the domestic worker is an independent contractor who is performing domestic  
33 service at different residences, and that would not be covered. In any event, if a  
34 domestic worker performed less than 20 hours per week for -- they would not be  
35 covered. If they were performing more than 20 hours a week for more than a period of  
36 30 days, they would be covered. If they're working for a company that contracts with the  
37 client or if the domestic worker is working that amount for an individual employer and  
38 has an employer/employee relationship, which is defined in other laws. So that is --  
39 those are the scenarios there. And then we'll go through a number of exceptions that  
40 are in the legislation to those. The second issue -- .

41  
42 President Knapp,  
43 Before you do that, there are a couple of lights on that I see.  
44



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1 Vice President Andrews,  
2 There are, okay.

3  
4 President Knapp,  
5 Councilmember Leventhal, we'll start with him first.

6  
7 Vice President Andrews,  
8 And let me first mention that Councilmember Elrich and Councilmember Leventhal are  
9 the sponsors of the legislation and I know want to comment on it through discussion, I  
10 welcome that.

11  
12 President Knapp,  
13 Councilmember Elrich then Councilmember Leventhal, and Councilmember Floreen.

14  
15 Councilmember Elrich,  
16 I want to thank the committee for bringing this legislation forward, and George for  
17 working together on this legislation. I think this is an important piece of legislation. We  
18 were, I think, rightly concerned by the results of the survey that was done before the  
19 County. People have talked about and thought about, you know, how can we effectively  
20 provide some additional support and help the people who we think need assistance.  
21 And, you know, balancing that against what are the proper bounds for how far the  
22 legislation should go. And I think that the Bill that's come out of the committee strikes  
23 the proper balance. I think it avoids treading into areas where we either ought not to go  
24 at all or if you do go, you should deal with all workers generically rather than focus on  
25 one class or workers. But it provides, on the other hand, a reasonable balance of  
26 protections in an effort to secure some of the most vulnerable workers in the  
27 community. I think that this -- this has invariably been raised more than one. This is  
28 about domestic workers; it's not about immigrant workers or anything else. And people  
29 need to look at this as a Bill focused on domestic workers and the rights and  
30 responsibilities of domestic workers. And all other questions about who the domestic  
31 worker is are irrelevant, because who a worker is isn't really important. The fact is  
32 what's important is the work a person does, the responsibilities they take on, their  
33 obligations and the obligations of the employer to that employee. So I want to brief. I'm  
34 grateful to the support of the committee, and I look forward to the passage of the  
35 legislation today.

36  
37 President Knapp,  
38 Thank you. Councilmember Leventhal.

39  
40 Councilmember Leventhal,  
41 I want to thank Mr. Elrich for his leadership on this; it's been a pleasure working with  
42 him. I want to thank my very capable Chief of Staff Patty Vitalie who's put in a great deal  
43 of time and effort on this Bill, and Mr. Elrich's staff person, Tiffany Ward, Bob Drummer  
44 who has drafted this and who will be available to answer questions; and there will be



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1 questions; and Councilmembers Trachtenberg and Ervin, who have given a great deal  
2 of feedback and support to this effort. I really, of course, want to acknowledge that this  
3 work, and I'm going to quote Mr. Elrich who had a superb quote in the press release --  
4 this is the most important work that there could be. What could be more important than  
5 caring for our children or making sure that we live in safe and clean and happy  
6 environments in our homes, or caring for our parents and our grandparents? And yet all  
7 too often these workers are not treated as professionals. And so this is a very simple  
8 requirement. I don't believe overreaches. There were proposals that Mr. Elrich and I  
9 decided not to take on, because as Mr. Elrich said we felt it was beyond the scope of  
10 what we were comfortable with County Government taking on. But simply ensuring that  
11 workers performing these important functions are treated as professionals and have the  
12 right to contract I think is an important and appropriate step, and I hope very much that  
13 my colleagues will join us in voting for it this morning. I do have on point here -- on  
14 points 1 and 2 as to who is covered. I do have a proposed amendment that I'd like to  
15 circulate at this time. And it clarifies that the con -- where -- and where a worker works  
16 for an agency, that is if you call A1 Cleaning Service or Care for the Elderly, or  
17 whatever, that the contract may be between the agency and the worker and it does not  
18 necessarily have to be between the homeowner and the worker, where the worker is an  
19 employee of the agency.

20  
21 President Knapp,

22 But before you do that, I was going to -- because Council Vice President Andrews  
23 hadn't gone through number 2 yet. So let's go through what the committee had actually  
24 done.

25  
26 Councilmember Leventhal,  
27 Very good, yes.

28  
29 President Knapp,

30 And actually Councilmember Floreen had a question on his first presentation, I believe.

31  
32 Councilmember Floreen,

33 Well, my question, I think, Mr. Leventhal is going to address it.

34  
35 President Knapp,

36 Okay.

37  
38 Councilmember Floreen,

39 But it had to do with some of the language in this section, but I suppose it's covered by  
40 these -- what we're about to hear perhaps. If I could just comment, I think it's important  
41 that people be clear about how they work with each other. And I there are significant  
42 advantages to this Bill. I've been in this boat. I've certainly hired housekeepers and  
43 nannies, and I've hired elder-care workers. So it's a tremendous amount of paperwork  
44 though. There are lots of reporting requirements, all kinds of things that you have to do



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1 to meet the State and Federal requirements. Unemployment reports, Social Security  
2 issues, all this stuff, and so I am just trying to -- my question is -- goes perhaps to what  
3 Mr. Leventhal is about to address, which is how does it work for the average person  
4 who wants to obtain services through -- particularly through an agency situation. And  
5 that's what this language that everyone is about to get into will address. Because I didn't  
6 understand what staff said here on page 3, having to do with the difference between an  
7 independent contractor and the employee of a company that contracts with the client.  
8 You get into common-law employer/employee issues, which I don't under -- I'm not  
9 familiar with and it -- I think it's helpful for the law to be clear about who does what  
10 under the circumstances. So if this -- I think this language will address my concern in  
11 this regard, and I'm looking forward to the clarification on that point.

12  
13 President Knapp,  
14 Council Vice President Andrews, to go back to review of the Bill.

15  
16 Vice President Andrews,  
17 All right.

18  
19 President Knapp,  
20 And then the amendment.

21  
22 Vice President Andrews,  
23 Okay. Well it is related to issue two, which is at the bottom of page 3 of the packet,  
24 which was should the Bill cover employees of a company that contracts with a person to  
25 provide domestic service in that person's residence. And the committee recommended  
26 yes, there shouldn't be a blanket exemption for that. We did look at later we'll get into,  
27 which types of employees we thought should be exempt based on certification  
28 standards, but not a blanket exemption for employees of a company that contracts with  
29 a person to provide domestic service. The survey that was done in 2006 didn't show a  
30 significant difference in the working conditions for those respondents who were  
31 company employees versus non-company employees. And so this may be the  
32 appropriate time to take up the amendment by Councilmember Leventhal.

33  
34 President Knapp,  
35 Okay. Councilmember Leventhal.

36  
37 Councilmember Leventhal,  
38 We'll move this amendment now, and it simply states that the contract -- that where the  
39 employer is an agency that hires a domestic worker to perform domestic service in the  
40 home of the consumer of the service, the employment contract may be between the  
41 agency and the employee, but there still must be a contract. But it need not be separate  
42 contracts with the homeowners who are clients of the agency; the contract may be  
43 between the agency and the employee.



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1 President Knapp,  
2 Councilmember Berliner.

3  
4 Councilmember Berliner,  
5 I just have a clarification. I appreciate the spirit of this amendment and support this  
6 amendment; it is the word 'may' that interests me, because that is a word implies  
7 discretion as opposed to shall be. So my question for Counsel is why isn't this, if it's the  
8 sponsor's intent, that where this employment relationship exists that is where the  
9 contract should be. I don't get why this is a 'may' as opposed to 'shall be.' So I ask  
10 Counsel with respect to that.

11  
12 Bob Drummer,  
13 I'm looking at the -- in the second paragraph of the amendment; is that where you're  
14 talking about there are two 'may's' in there?

15  
16 Councilmember Berliner,  
17 In the document I have it is the second to last sentence, 'if the domestic worker is  
18 employed by an agency, the employment contract may be between.'

19  
20 Bob Drummer,  
21 Yeah, I think it -- a 'must' would be appropriate there.

22  
23 Councilmember Leventhal,  
24 I have no -- that's fine. That's up to [inaudible].

25  
26 President Knapp,  
27 Okay. The maker of the amendment is accepting of the [inaudible].

28  
29 Councilmember Leventhal,  
30 That's fine. We can substitute the word 'must' for 'may.'

31  
32 President Knapp,  
33 Friendly modification. Okay we -- .

34  
35 Councilmember Leventhal,  
36 Well do you prefer 'must' or 'shall'?"

37  
38 Councilmember Berliner,  
39 I think it 'shall be.'

40  
41 Bob Drummer,  
42 Well we used 'must' -- we used 'may' and 'must' throughout the [inaudible].

43  
44 President Knapp,





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1 Councilmember Ervin.

2  
3 Councilmember Ervin,

4 Thank you. I do want to stay on this topic for just a quick second, and that is my -- my  
5 fear actually that we're crossing over into some employment law, I think, that if you -- if  
6 the Council now is going to be requiring an employer to provide a contract, same as a  
7 union that negotiates contracts, has to provide the same thing, who is over the  
8 regulation here? Is it the Council or is it the National Labor Relations Board, is it -- I'm  
9 just asking the question because I'm not quite sure how far we want to take this. I'm  
10 going to support this legislation, but my fear is that there are some lines that we're  
11 crossing over.

12  
13 Bob Drummer,

14 You're talking about a situation where the domestic worker -- .

15  
16 Councilmember Ervin,

17 Well we're asking -- .

18  
19 Bob Drummer,

20 Who works for a company -- .

21  
22 Councilmember Ervin,

23 Exactly.

24  
25 Bob Drummer,

26 Is actually part of a collective bargaining agreement.

27  
28 Councilmember Ervin,

29 Exactly. You're ask -- what we're doing here is we're proposing that an employment  
30 contract be basically negotiated between an employer who hires through an agency and  
31 then sort of, you know, sends out the employee to go do their work; we're asking that  
32 employer to enter into contracts with their employees. I really do believe this might be  
33 problematic for us. I'm just going to lay that out there. I support the intent of the  
34 legislation, but we are not really here to be the bargaining agent for employers in the  
35 County to do -- I think it's almost going a little bit too far. So I don't know how much  
36 research you have done on this topic. I think clearly that this has not been done  
37 anywhere else in the country that I know of. So we really don't know how -- what kind of  
38 shaky legal ground we may be on -- in or whether or not, you know, what agency really  
39 is going to be the, you know, sort of the arbiter of this, you know, legislation, where it's  
40 going to fit, because we really are going way out there.

41  
42 Bob Drummer,

43 Well, you raised some interesting questions. First, we didn't look at a possibility that the  
44 domestic worker is covered by a collective bargaining agreement with their agency.



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1 They wouldn't be covered -- obviously the collective bargaining agreement with one  
2 employer if you hire somebody individually. But if you work for a company, it's possible.  
3 Clearly, if there's a collective bargaining agreement governed by the National Labor  
4 Relations Act, the employment -- individual employment contract couldn't conflict with  
5 that. But that doesn't mean that you couldn't write an individual contract that's  
6 consistent with the collective bargaining contract.

7  
8 Councilmember Ervin,  
9 I have no problem with the individual contract. We're now hoping over that into a  
10 situation where we're saying in law that the employer of agencies have to do the same  
11 thing. That's where I have a little bit of heartburn.

12  
13 President Knapp,  
14 Councilmember Leventhal.

15  
16 Councilmember Leventhal,  
17 Well first of all domestic workers are not covered under the National Labor Relations  
18 Act -- Labor Standards Act, or any other federal labor relations statutes. However,  
19 there's nothing in this Bill -- and when we asked the question as to what agency will be  
20 responsible, the agency is our Office of Consumer Protection. The responsibility that  
21 that agency has is simply to ensure that a contract is negotiated and offered. That's  
22 what the Bill requires and that's what the Office of Consumer Protection would require.  
23 If the amendment pending is not, you know, if a Councilmember has an objection to the  
24 pending amendment, which would clarify that an agency that employs a worker must  
25 offer a contract to that worker, then surely that -- any Councilmember who objects to  
26 that should not vote for the amendment. It was I think than clear in the legislation as  
27 introduced and we had a number of questions from agencies. Certainly employment  
28 agencies and many employers would like to be exempt from this legislation altogether.  
29 The Public Safety Committee discussed whether to exempt these employers altogether,  
30 and it was the Public Safety's judgment that they should not be exempted as the  
31 Chairman stated -- Chairman Andrews, because the survey showed that the working  
32 conditions were not optimal even for employees of these agencies. So there has been a  
33 fair amount of discussion of this. I don't think there's a lack of clarity. Let me be clear  
34 that although the Federal Labor Relations Act specifically excludes domestic workers, it  
35 is my understanding that that does not prevent domestic workers from organizing  
36 [inaudible] organized, but they are not protected from retaliation. They are not provided  
37 with the kind of rules and procedures that that NLRB would enforce. So the NLRB never  
38 comes into play for this category of workers, regardless of whether they work for an  
39 individual homeowner or whether they work for a company; they're exempted from this.  
40 But what we are not doing by this amendment or by anything in this Bill is preventing  
41 unions from organizing these workers. They may organize these workers. The task of  
42 organizing these workers is much harder because they don't have federal protection.

43  
44 President Knapp,



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1 Councilmember Berliner.

2  
3 Councilmember Berliner,

4 The issue that our colleague has raised, as I heard our colleague, was in an instance in  
5 which there was a collective bargaining agreement present, and whether or not we  
6 would be superseding or otherwise entangling ourselves with respect to that  
7 arrangement. I'm not aware of the extent to which such collective bargaining  
8 agreements exist in such agencies. But it would seem to me, and I posit this to the  
9 sponsor, that there is no need for us to worry about that, because if they are in fact in a  
10 collective bargaining agreement, I assume that that agreement provides for the quality  
11 of employment that is appropriate. And therefore where such agreements do in fact  
12 exist could be written into this amendment to be exempt. So I just posit that as a  
13 possibility to the extent to which we believe that there is a significant chance that we are  
14 entangling ourselves. And I toss that out to Counsel as well.

15  
16 President Knapp,  
17 Councilmember Floreen.

18  
19 Councilmember Floreen,

20 Well, let me ask this scenario -- about this scenario. A couple of years ago I hired -- I --  
21 my husband had to hire someone to take care of me some years ago when I had a bad  
22 accident. And I asked him about the details because I didn't remember it and he didn't  
23 either. But I had to hire someone to take care of my -- to assist my mother some years  
24 ago. And I called up XYZ home healthcare and arranged for someone to be with her.  
25 And, you know, I said I need someone during these hours and -- during these hours  
26 basically. And they sent me a nice person who took care of my mother. So that XYZ  
27 agency, under these rules, they might have a contract with someone which said this --  
28 the language that we have here does not require anything in any detail. I mean it  
29 doesn't say it must be this way, it just says these are the points that you need to cover  
30 in a contract.

31  
32 Bob Drummer,  
33 That's correct, yes.

34  
35 Councilmember Floreen,

36 So it could be that XYZ home healthcare agency could say, and the parties could agree,  
37 you will be available upon call, I suppose, at wages to be determined. We do not  
38 address a certain number of these points. It would address who takes care of Social  
39 Security payments or not. It would address, presumably, how often one would get paid  
40 once a contract was entered into with a third party. And it might say we do not address  
41 issues associated with living and meals and breaks; is that possible that that home  
42 healthcare agency might have a contract that said, you know, we just -- these are thing -  
43 - issues out there, but they are to be determined later?



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1 Bob Drummer,

2 No, I -- although the Bill does not require specific terms, you know, how much you get  
3 paid or what your hours are, the contract would have to cover that. I mean, to write a  
4 contract that says wages to be determined isn't covering wages. I mean, I wouldn't  
5 interpret that as sufficient to satisfy the Bill. You'd have to put down the wages could  
6 vary by some clause, or could be whatever they are, but you have to say that. If the  
7 hours may be, you know, hours based on -- that may not have to be set in stone  
8 obviously, but you'd have to make a good-faith attempt to resolve these issues, not just  
9 leave a blank contract and say you will get paid wages; we'll determine that later. That's  
10 not what the Bill was trying to do.

11  
12 Councilmember Floreen,

13 So that employment agency would need to have -- have had some specific -- specifics  
14 in each -- each item that's shown on circle 5? You will be reimbursed for work-related  
15 expenses at -- .

16  
17 Bob Drummer,

18 Or you won't.

19  
20 Councilmember Floreen,

21 Or you won't. It would say yes or no, and if it's yes it would say what that amount would  
22 be or what the rules would be in that regard.

23  
24 Bob Drummer,

25 If you're going to get paid time off or no paid time off, or all of that it would have to be  
26 covered. But if -- the result could be whatever the parties agreed to.

27  
28 Councilmember Floreen,

29 Okay. So did -- would that provide adequate flexibility for the party whose -- the person  
30 who is not within the agency relationship but who, you know, the person who is entering  
31 into the agreement with the agency. That would take -- this language would take care of  
32 that obligation.

33  
34 Bob Drummer,

35 Well it would allow -- it would make it clear, which I believe was already in the Bill. If the  
36 agency is the employer of the worker then the contract should be between the agency  
37 and the employee/worker, not between the recipient of the service and the worker.

38  
39 Councilmember Floreen,

40 Yeah, okay. All right.

41  
42 President Knapp,

43 Councilmember Leventhal.



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1 Councilmember Leventhal,

2 I just wanted to clarify that in the circumstance in your home, you and David would not --  
3 if you hire an agency, not hire an individual then you and David would not be negotiating  
4 these terms; it would be the agency that would negotiate these terms. So all you would  
5 do is you would call the agency and the agency would send you a worker. And the  
6 agency would explain to you what your agreement is with the agency. You would not be  
7 involved with that individual worker, because that individual worker is not your  
8 employee. You're a client of the agency.

9  
10 Councilmember Floreen,

11 That part is clear. The question I have had to do with what would be in that agreement  
12 between the agency and the employee. I have another point of clarification, but it's not  
13 related to this.

14  
15 President Knapp,

16 [Inaudible]. Point of clarification on this amendment.

17  
18 Councilmember Floreen,

19 No.

20  
21 President Knapp,

22 Okay.

23  
24 Vice President Andrews,

25 Let me make a comment. I want to defer to Councilmembers Elrich and Leventhal and  
26 their interpretation of their intent. The Bill as introduced doesn't require that there be a  
27 contract agreed to. It requires there be an offer proposed and discussed. But it doesn't  
28 say that there has to be a contract agreed to before a domestic worker can work.

29  
30 Councilmember Leventhal,

31 I think there's going to be a subsequent amendment on that. Maybe if it's alright with the  
32 Chairman and the Council President, maybe we could dispose of the pending  
33 amendment.

34  
35 President Knapp,

36 Further discussion on the amendment before us? Mr. Chairman?

37  
38 Vice President Andrews,

39 No.

40  
41 President Knapp,

42 Okay. All right. We before us an amendment as offered by Councilmember Leventhal,  
43 modifying the language that says a domestic worker employed by an agency, the  
44 employment contract must be between the agency and the employee. Any further



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1 discussion on that amendment? All in support of the amendment indicate by raising  
2 your hand; Councilmember Leventhal, Councilmember Berliner, Council Vice President  
3 Andrews, Councilmember Elrich, Councilmember Trachtenberg, Councilmember  
4 Floreen, and myself. Those opposed; Councilmember Ervin and Councilmember  
5 Praisner. The amendment carries 7-2. Council Vice President Andrews.

6  
7 Vice President Andrews,  
8 Okay. Councilmember Floreen has a question.

9  
10 Councilmember Floreen,  
11 I had another point of clarification here. I know that the memo says this but the  
12 legislation doesn't actually make it clear. And I -- there are many providers out there that  
13 offer services in a home. Not necessarily the home of the recipient but home daycare  
14 providers, there are home elder care providers and the like. And I know that that's  
15 what's intended by this legislation, but I thought it would help to add some language that  
16 could clarify that this is intended to be provided in a home of the recipient of the service.  
17 Sometimes family members might pay for service to be provided by -- for another.  
18 There are various relationships here that come into play. And Mr. Drummer suggested  
19 language that would address this on circle 3, line 43. And I apologize we haven't written  
20 it out because it just was suggested a few minutes ago that domestic service means,  
21 when insert primarily performed in a home of the recipient of the service located in the  
22 County. And that is language that would take care of line 43 and 44. Domestic service  
23 means when primarily performed in a home in -- in a home of the recipient of the service  
24 located in the County.

25  
26 Vice President Andrews,  
27 Domestic service means -- .

28  
29 Councilmember Floreen,  
30 Means when primarily performed in a home of the recipient of the service located in the  
31 County.

32  
33 Vice President Andrews,  
34 It's not written out.

35  
36 Councilmember Floreen  
37 And that would make it clear that you're not addressing home health -- childcare or  
38 healthcare providers who provide this service in their own home. That's what that  
39 language is intended to say, and that's what Mr. -- it was Mr. Drummer's way to do that.

40  
41 Bob Drummer,  
42 Right.

43  
44 President Knapp,



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1 Okay.

2  
3 Councilmember Floreen,  
4 That would be acceptable to this.

5  
6 President Knapp,  
7 So that is an amendment.

8  
9 Councilmember Floreen,  
10 Yes.

11  
12 President Knapp,  
13 So does everyone understand line 43 changing domestic service means when primarily  
14 performed in a home of the recipient of the service.

15  
16 Councilmember Floreen,  
17 Located in the County.

18  
19 President Knapp,  
20 Located in the County.

21  
22 Councilmember Leventhal,  
23 Striking the words or in connection with work that is primarily -- .

24  
25 President Knapp,  
26 Right so striking or in connection through to located on line 44. Okay.

27  
28 Vice President Andrews,  
29 Okay.

30  
31 President Knapp,  
32 Without objection.

33  
34 Vice President Andrews,  
35 Okay. On to issue 3, which is on page 4 and that was should the Bill exclude domestic  
36 workers who provide state regulated home healthcare services, and the committee's  
37 position was to support an amendment that excluded registered nurses, licensed  
38 practical nurses, and certified nursing assistants who are licensed or certified by the  
39 Maryland Board of Nursing. They are not employees that were the focus of the survey  
40 and do not appear to be in a situation where they might have the same -- suffer some of  
41 the same ill effects that the folks surveyed do. And so the committee's recommendation  
42 was to exclude those categories of workers. I don't see any questions. All right.

43  
44 President Knapp,



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1 No questions.

2  
3 Vice President Andrews,  
4 Four was whether the Bill should exclude people who are related to the person who  
5 receives the services. The committee said yes. So that would exempt family members  
6 of the person receiving the service.

7  
8 President Knapp,  
9 Children [inaudible].

10  
11 Vice President Andrews,  
12 All right. The fifth issue was whether the Bill should exclude elder care services; if not,  
13 should the Bill create an exception to the separate bedroom requirement for live-in elder  
14 care workers. We had some discussion on this in the committee. We've heard -- there's  
15 a letter in the packet from the Commission on Aging that is on circles 41 and 42 of the  
16 packet, and expressed concern that it would make it more difficult for economically  
17 disadvantaged seniors to obtain elder care services for companionship and personal  
18 care. This is on circle 41. And that -- because of the nature of the service, we believe  
19 this is the Commission on Aging it's less likely that the domestic worker providing  
20 companionship and personal care for the elderly would be subject to the abuses that the  
21 Bill is designed to protect against. And so the Commission on Aging recommended  
22 exempting from the definition of domestic worker those who primarily serve as a  
23 companion to elderly individuals, and I have an amendment that I'm prepared to offer.  
24 This was an issue in the committee where I was the minority on this one. The committee  
25 recommended 2-0 not to have that exclusion. I supported that exclusion. I share the  
26 concerns of the Commission on Aging, and I don't think you have the same issues at  
27 play, at least not to the degree with companion senior care of companion care to  
28 disabled individuals who are unable to care for themselves. And so I will pass out an  
29 amendment that would amend what the committee has recommended to the Council,  
30 and I will propose this amendment which is making its way to you now; which simply  
31 removes -- what it says is that an individual who primarily serves as a companion to a  
32 disabled or elderly individual who is unable to care for himself or herself is not defined  
33 as a domestic worker under this legislation.

34  
35 President Knapp,  
36 There is an amendment offered; is there a second.

37  
38 Councilmember Trachtenberg,  
39 Second.

40  
41 President Knapp,  
42 Seconded by Councilmember Trachtenberg. Discussion on the amendment?  
43 Councilmember Leventhal.





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1 Councilmember Leventhal,

2 Well of course the Council will exercise its will on Chairman Andrews' amendment. I will  
3 not vote for it. Just to be clear, this would exempt about a third of the workers who  
4 would be covered otherwise. In my own experience in, you know, we all have our own  
5 experiences in our own lives, and caring for elderly relatives and hiring caretakers for  
6 elderly people who we love. Although I love the elderly people who I've had the  
7 responsibility to care for in my life, I know that an assumption that an elderly person is  
8 more inclined to be considerate of the needs of his or her caretaker is probably false. As  
9 elderly people age, as they experience more pain and misery, I think they are even  
10 more inclined to be primarily focused on their needs rather than the needs of the low-  
11 wage worker who is caring for him or her. And it seems very plausible to me that a low-  
12 wage worker whose responsibility is caring for an elderly person may be expected to  
13 work through weekends, may not get vacations, may not be afforded the opportunity to  
14 get days off. The very abuses that we're concerned about seem to be just as likely in  
15 the case of caretakers for the elderly as in the case of housekeepers or nannies. So if it  
16 is the committee's will to exempt caretakers for the elderly -- if it is the Council's will, of  
17 course, that's the Council's will. But I will not vote for this amendment. I don't think it's  
18 justified.

19  
20 President Knapp,  
21 Councilmember Trachtenberg.

22  
23 Councilmember Trachtenberg,

24 Thank you, President Knapp. Actually I'd be curious to start my remarks off by asking  
25 Councilmember Leventhal how do we know that a third of the workers would indeed be  
26 folks that would provide care to the elderly.

27  
28 Councilmember Leventhal,

29 Well, we don't have a great deal of data on the workforce what we're trying to effect.  
30 What we have was a relatively random sample of, as the Chairman stated, more than  
31 300 workers, and as you see on page 2 of that somewhat random sample who are  
32 identified through a community sweep, through community groups, through churches,  
33 through a wide range of areas in which domestic workers were identified, 28% worked  
34 as nannies, 44% worked as housekeepers, that's 72%; two-thirds would 67%, so  
35 between a quarter and a third of the workers who were identified in that random sample  
36 were not nannies and were not housekeepers, I'm therefore assuming that what roughly  
37 that percentage are caretakers for the elderly. That's the basis for my assertion.

38  
39 Councilmember Trachtenberg,

40 Well, I appreciate that information. It would seem to me that a good number of folks that  
41 are providing care to the elderly are actually doing it through contractual arrangements  
42 with agencies. It would seem to me that would be more the norm than folks just  
43 answering blindly an ad and having employment based on that solely. I support the  
44 amendment as proposed by Council Vice President Andrews. And I'm supporting it



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1 because I really feel that elder care is a necessity more often than not; not a luxury. And  
2 I know that's, in a nutshell, pretty much what the commission argued. And I also know  
3 from some personal experience that I have begun to have in the last few months that I  
4 think that the home situation for the elderly is a very different environment, and  
5 oftentimes employment needs to be more flexible. In other words, I know with my  
6 mother-in-law, who we have recently hired care for, what she needs is to actually have  
7 the service provided in the evening and on the weekend. She doesn't need a regular 9-  
8 to-5 situation because she's got other medical personnel that are in and out of her  
9 home. And clearly we're looking to provide companionship and caretaking within the  
10 home, which is becoming more and more a trend in communities across the country. So  
11 I speak in support of the amendment as proposed by Council Vice President Andrews.

12  
13 President Knapp,  
14 Councilmember Elrich.

15  
16 Councilmember Elrich,  
17 I'm going to oppose the amendment. I think it's a difficult call of which way to go on this.  
18 But I feel that probably my own experience with some of the elderly is that they're not  
19 the easiest population always to deal with. The assumption that somehow this is an  
20 easier group rather than a more difficult group, I think is speculation. I think the needs of  
21 the workers stay the same regardless of who the person is who is receiving the care.  
22 And I don't think that the abuses are any less likely to occur under this situation than  
23 any other. I also think that in a lot of the cases the person who is going to be contracting  
24 or finding the worker is going to be a relative of the person who is convalescing,  
25 disabled or if they're elderly and not able to fully manage their affairs, that work is going  
26 to be contracted by somebody who is able to manage affairs and is able to assure  
27 payments and is actually helping look after, at least in some sense, the elderly person  
28 who is receiving the care. So I would rather err on the side of making sure that the  
29 protections are in place rather than to exclude this group. I'm not sure exactly what the  
30 percentage is. I think George's assumption is a possible interpretation. Maybe there is  
31 another category we haven't thought of that would diminish it somewhat. But I think it's  
32 a significant number of people, and I think they need the same protections everybody  
33 would get.

34  
35 President Knapp,  
36 Councilmember Floreen.

37  
38 Councilmember Floreen,  
39 Thank you. Well my experience with this has been complicated, and so I ask did the  
40 committee have a thorough conversation with the Department of Aging and Disability  
41 Services on this issue?

42  
43 Vice President Andrews,  
44 No.



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Councilmember Floreen,  
Or Commission on Aging?

Vice President Andrews,  
We have the letter from the Commission on Aging.

Councilmember Floreen,  
We have the letter.

Vice President Andrews,  
But we did not have a discussion with the department.

Councilmember Floreen,  
There -- people go about this every which way. Some services -- I don't know how many  
-- whether the County funds some of this service. I don't if -- .

Councilmember Trachtenberg,  
It depends on diagnosis.

Councilmember Floreen,  
And I don't know -- I know that some churches get engage and help people locate  
support. I certainly know that some people can't be discharged from the hospital unless  
they're into the care of someone who can help them get to the bathroom, for example,  
or -- and you might be able to employ an agency if you have the resources. The  
challenge of negotiating a contract as is proposed is not all that easy for everyone  
getting into the details. It is supposed to be a form contract. But it is tough. Not all  
elderly have a good support system that's going to work all these things out. I would  
certainly like to hear from the department as to -- or have a better conversation with the  
Commission on Aging before I were to require this over their objections, at least this  
point. And understand what alternative solutions might be available. These are hard and  
unpredictable environments in which people find themselves. And particularly because  
of some of the difficulties of aging the ability to have a good long-term conversation be  
able to manage one's affairs, I guess I would like to hear more before I rule out this  
approach. I don't know. I guess we're supposed to act on this right now. But I would  
support Mr. Andrews' language at least until we've heard what other options there might  
be out there to address this problem for seniors. It's really tough. I have many neighbors  
who get a little bit of care during the course of the week. And if that's three hours a day  
or three days a week, then they're subject to this under these rules. And I don't know  
the extent of their circumstances, but I do know that it might make a difference both in  
terms of employment opportunities and in terms of the kind of care that people need of  
one sort or another. It's not just nursing care, it's just oftentimes someone to be around  
period in case an elderly person has fallen and -- fallen, which is a common issue. And  
so there are so many different ranges here, I am a little concerned that we're getting -



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1 requiring contracts without all the best information about how to go about ensuring that  
2 the right environment is provided for at least our low-income elderly who don't have a  
3 built-in family support system.

4  
5 President Knapp,  
6 Councilmember Berliner.

7  
8 Councilmember Berliner,  
9 Thank you, Council President. I have -- will offer two what I hope are friendly  
10 amendments to the amendment offered by the Chair of the committee with respect to  
11 this issue. It is to limit the scope of the exemption by accepting those who are employed  
12 by an agency. The sponsor of the legislation indicated that it was as many as a third of  
13 these workers could be covered by this, and my belief is that that's probably an  
14 overstatement insofar as some portion, as I think Councilmember Trachtenberg alluded  
15 to, have to be in [inaudible], and I don't think we need to exempt them if they're in an  
16 agency; the rest of the Bill should cover that relationship and require that. The second  
17 issue is I do think that this is worthy of analysis. I think in the first instance it would be  
18 right to -- I'm supportive of the thrust of the amendment. But I think it would serve us  
19 well to have a report from the department a year from enactment as to whether they  
20 recommend that the elderly do in fact require additional protections that would warrant  
21 them being within the scope of this Bill.

22  
23 President Knapp,  
24 Which department?

25  
26 Councilmember Berliner,  
27 HHS.

28  
29 President Knapp,  
30 Okay.

31  
32 Councilmember Berliner,  
33 So I would suggest that if that is acceptable a year from the effective date that we hear  
34 from our Executive Branch as to whether or not they believe that additional protections  
35 are warranted that would bring them back within the scope of this legislation, and then  
36 the Council could consider that in its deliberations on this matter.

37  
38 Vice President Andrews,  
39 [Inaudible].

40  
41 President Knapp,  
42 So your first language change would be to do?

43  
44 Councilmember Berliner,



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1 To -- I believe on lines 21 through 25 we would insert language that would [inaudible]  
2 individual and it could be except who -- where employed by an agency -- I don't know is  
3 it where or who -- except when employed by an agency. So I'm looking at lines 21  
4 through 25. Do you have that language handy?

5  
6 Bob Drummer,  
7 I've got all of these amendments and I seem to have misplaced that one. I don't actually  
8 have that one. I wrote it and I don't have it.

9  
10 President Knapp,  
11 Okay, so on line 21, an individual except -- .

12  
13 Bob Drummer,  
14 Now I have it.

15  
16 Councilmember Berliner,  
17 I believe it's amendment two.

18  
19 Vice President Andrews,  
20 Yes.

21  
22 Bob Drummer,  
23 Yes, I have it now.

24  
25 Councilmember Berliner,  
26 Except when employed by an agency or whatever the appropriate word is there would  
27 on line 21; so carving out those folks from the scope of the exclusion.

28  
29 Bob Drummer,  
30 So it would read, an individual primarily serving as a companion to the disabled or  
31 elderly individual who is unable to care for himself or herself except -- .

32  
33 Councilmember Berliner,  
34 Except where employed by an agency.

35  
36 President Knapp,  
37 Except for such individuals employed.

38  
39 Councilmember Berliner,  
40 Whatever.

41  
42 Bob Drummer,  
43 Except where employed.



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1 Councilmember Berliner,

2 What that would do is if the caregiver is employed by the agency, it would be subject to  
3 the previous language that we've adopted that would say contractual relationship with  
4 the agency, but not with the elderly.

5  
6 President Knapp,  
7 Councilmember Ervin.

8  
9 Councilmember Ervin,  
10 I generally like amendment number two that was just provided by Councilmember  
11 Andrews, and I'm listening to your amendment to his amendment; my only problem is I  
12 get really stuck in this issue of nurses and -- registered nurses, licensed practical nurses  
13 and certified nurses assistants, because it's a highly regulated industry, and I do not  
14 believe that folks who are caregivers at that level see themselves as domestic workers.

15  
16 Unidentified,  
17 [Inaudible].

18  
19 Councilmember Ervin,  
20 So they're exempted. So what he is saying is just to go back to the original -- this is  
21 where I'm stuck. So what are we doing if we vote for the -- .

22  
23 Vice President Andrews,  
24 It's not changing that.

25  
26 Councilmember Ervin,  
27 It's not changing that; okay, great. Thanks.

28  
29 President Knapp,  
30 Councilmember Leventhal.

31  
32 Councilmember Leventhal,  
33 Well I've heard the comments, so it appears the Council is going to pass this  
34 amendment. I just hope that the advocates for these workers will continue to be in  
35 contact with them, and will indeed let County Government know if there are  
36 circumstances that require attention. I have, as all of my colleagues do, a wide range of  
37 contacts in the community. I do have a concern for those elderly people who need care,  
38 but I also have a concern for those workers who provide the care. And I've known  
39 people in both circumstances, and I have had extensive experience myself in those  
40 circumstances. When patients are discharged from the hospital, primarily they need the  
41 skilled nursing care that was already exempt from this Bill. Where someone is a live-in  
42 companion working more than 20 hours a week, I continue to believe that the likelihood  
43 that that person may have their need for time off, their need for weekends, their need for  
44 vacations, neglected. It appears the Council is not going to address that concern in this



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1 Bill. I hope we will pass the Bill. Again, I will not vote for the amendment, but I hope that  
2 the advocates for the workers will continue to be aware of the circumstances of those  
3 workers who we are carving out of the Bill. And if abuses occur and if there are  
4 concerns for those workers that the advocates who have done a superb job of bringing  
5 this issue to our attention will continue to apprise elected officials about those concerns.  
6

7 President Knapp,  
8 Councilmember Elrich.  
9

10 Councilmember Elrich,  
11 After listening to the discussion, I guess I wonder whether this amendment might  
12 actually be counterproductive. It strikes me that the people who are vulnerable you're  
13 expecting them to simply pick up a phone. They can't care for themselves, they're  
14 disabled, and pick up a phone and call somebody and say will you come in here and  
15 work for me. On what terms? It seems that in this case the contract would actually serve  
16 better to protect the elderly person than to not have a contract. They would have a  
17 clearer understanding of what they're getting and why they're getting it than to not have  
18 a contract. So I'm not sure that you might actually be making the situation worse for  
19 people who the reason we're doing this for is because they're less able to take care of  
20 their affairs it seems. You know, the implication is that doing the contract is too  
21 complicated for them. But how is somebody who is that disabled going to arrange to  
22 have this care in the first place. I mean it seems that you've got a problem. The issue is  
23 what does elderly mean? Is this simply an exemption that if -- I don't know what the new  
24 definition is. Is it 65, 67, or 72? Does this apply to anybody who reaches a certain age  
25 and this is an exemption? Or do you have to exhibit qualities of elderliness in order to --  
26 I try to avoid that definition myself.  
27

28 Bob Drummer,  
29 Yeah, I feel like I'm getting there myself.  
30

31 Unidentified,  
32 [Inaudible].  
33

34 President Knapp,  
35 Let's let Mr. Drummer respond.  
36

37 Bob Drummer,  
38 The reason -- there is no actual definition of the elderly. And the reason for that is  
39 because we've also added in disabled. So essentially if you're talking about somebody  
40 who is unable to care for himself or herself. We don't look at what age they are. I mean  
41 you could be disabled at 48 and need some sort of in-home care. So we're not trying to  
42 go by age, it just happens to be -- I've noticed as I've grown older that people if they  
43 reach a certain age sometimes they need a little more help.  
44



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1 Councilmember Elrich,  
2 But it says disabled or elderly as opposed to disabled and elderly.

3  
4 Bob Drummer,  
5 Right. So you could be disabled or elderly and that way there really wouldn't be an  
6 argument about whether you're, you know, well I'm not old enough to be elderly. It's  
7 okay, because you're hiring somebody because you're unable to care for yourself.

8  
9 Councilmember Elrich,  
10 So if somebody can't simply say -- I mean I would assume that disabled would have  
11 been sufficient in that case, and the use of elderly wouldn't have been necessary. When  
12 you're saying elderly are you implying that a person can simply state they're not able to  
13 take care. I mean, it just seems to me it just opens the door to -- if you purpose is the  
14 disabled then I don't understand why elderly is in there.

15  
16 Bob Drummer,  
17 Well if an elderly individual is unable to care for himself or herself, not an elderly  
18 individual. And it's -- would be an objective standard, I would think. It's not self-  
19 identified. I can't cook so I need to hire somebody. You know, it would be more --  
20 there's usually a medical diagnosis and a prescription you need certain care -- personal  
21 care in order to, you know, what is it. There's a term that they use which escapes me at  
22 the moment.

23  
24 Councilmember Elrich,  
25 But I think it's going to be an issue of distinguishing whether you don't want to cook for  
26 yourself or you're unable to cook for yourself. It's different than not being able to stand  
27 in front of a stove and cook as opposed to, like, this is more hassle than I want to go to.  
28 I'm 65 and I want somebody to cook my meals for me.

29  
30 Bob Drummer,  
31 Well I'm younger than that and I want somebody to cook my meals for me. That's not,  
32 you know, that doesn't get you into the Bill.

33  
34 Councilmember Elrich,  
35 I'm thinking about your teenagers are unable to care for themselves.

36  
37 Bob Drummer,  
38 Yeah, I think the term I was searching for before is assistance with the activities of daily  
39 living, and I think it's well-defined in State and Federal regulations, and doctors know  
40 what it means. I don't think that's going to be a problem. It's not going to be somebody  
41 who just doesn't like to cook and hires a cook, and then says well I don't have to comply  
42 with the Bill because I don't know how to cook. I don't believe that it's going to be a  
43 problem. But, you know, we certainly put in an age, but I would hesitate to try and figure  
44 out what elderly means as far as chronological age.





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1  
2 President Knapp,  
3 Last comment on this, Councilmember Leventhal.

4  
5 Councilmember Leventhal,  
6 I do think Mr. Elrich has pointed what could potentially be a significant loophole if this  
7 amendment does pass. And one of the concerns that Councilmembers has raised is the  
8 enforceability of this. And so if relatively able-bodied 67-year-old just doesn't feel like  
9 mopping her floor and hires someone to mop the floor, it is potential -- the potential  
10 exists that this amendment would exempt housecleaners and cooks for people who are  
11 above -- of a certain age. And I'm looking at Eric Friedman in the audience, and I don't  
12 envy him the task of adjudicating those complaints. So you may have housekeepers  
13 and cooks who believe they should be covered by the Bill, but because their employer  
14 is, you know, has salt and pepper hair, it appears Mr. Andrews' amendment would  
15 exempt them. So what is the definition of primarily serving as a companion? I appreciate  
16 you keeping me company, and while you're doing it would you please scrub the tub and  
17 cook my dinner. And those folks are going to be exempt now under the Andrews'  
18 amendment.

19  
20 Vice President Andrews,  
21 Let me make a suggestion here. The County has an age that it uses as a trigger for  
22 eligibility for some senior services, such as free ride-on service for senior citizens.

23  
24 Unidentified,  
25 [Inaudible].

26  
27 Vice President Andrews,  
28 Is it -- I don't think it's 50; no I don't think it's 50. Let's find out what that is and -- .

29  
30 Unidentified,  
31 [Inaudible].

32  
33 Vice President Andrews,  
34 Pardon me. Call a ride is 67, fine. Let's use that.

35  
36 President Knapp,  
37 Is that a modification to the amendment?

38  
39 Vice President Andrews,  
40 Yeah.

41  
42 President Knapp,  
43 Okay. I see no further discussion on the amendment. Those in support of the  
44 amendment as proposed and modified indicate by raising your hand; Councilmember



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1 Ervin, Councilmember Berliner, Councilmember Praisner, Councilmember  
2 Trachtenberg, Councilmember Floreen. Those opposed; Councilmember Leventhal,  
3 Councilmember Elrich and myself. The amendment carries 6-3. All right, moving right  
4 along.

5  
6 Vice President Andrews,  
7 That also -- as a result of the passage of that amendment lines 116 through 123 would  
8 be deleted because the issue of having an exception for a private room for sleeping with  
9 a door that could be locked, et cetera, no longer applies.

10  
11 President Knapp,  
12 Right.

13  
14 Vice President Andrews,  
15 As does the clause except as provided in subsection E, which is on lines 111 and 112.  
16 So those need to be deleted as well as a result, without objection I assume.

17  
18 President Knapp,  
19 Without objection.

20  
21 Vice President Andrews,  
22 Okay. All right. Issue six -- should the Bill exclude workers under the age of 21 who  
23 worked as a nanny or mother's helper? The committee said no; there's no reason to  
24 think that -- there's no reason to exclude people under 21 from this coverage of the law.  
25 The Maryland Wage and Hour Act doesn't exclude people under 21, for example. And  
26 the committee did recommend an amendment to exclude all au pairs from the Bill, since  
27 they are under a separate legal category. Seven, should the Bill exclude independent  
28 homecare providers and childcare providers who are authorized by law to organize for  
29 the purpose of [inaudible] negotiation with the State. A lot of research was done by Bob  
30 Drummer on this, and based on his research and recommendation, the committee voted  
31 3-0 for an amendment to exclude only the individual homecare providers covered by the  
32 executive order that is contained in the packet. Okay. Should the Bill be amended to  
33 require the referral of certain complaints to the Office of Human Rights? This was an  
34 amendment proposed by Councilmember Trachtenberg; and the committee agreed with  
35 it. And so there would be a required -- referral -- complaint alleging if there had been --  
36 employment practice to the Office of Human Rights. That is currently in the Bill. Should  
37 the Bill -- number 10 -- be amended to permit a referral to the Commission for Women  
38 Counseling and Career Center? And this was also proposed by Councilmember  
39 Trachtenberg; the committee supported it to permit a referral there. Number 11, should  
40 the Bill -- this is on page 10. Should the Bill be amended to require the directors to  
41 consult with the Commission for [inaudible] developing the model contract? The answer  
42 the committee gave was yes. The committee -- the director of Consumer Protection  
43 should be required to consult with the Commission for [inaudible] model contract and to  
44 publish it in English, French and Spanish.



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1  
2 President Knapp,

3 I just had a question as to practically how does that work. So does that mean that the  
4 Office of Consumer Protection drafts something, sends it over, says I need something  
5 back by Tuesday. And as long as they've had a chance to look at it, or I'm not sure what  
6 in consultation means.

7  
8 Bob Drummer,

9 It means that the ultimate responsibility is the Office of Consumer Protection, so they  
10 make the final decision. But they need to show it and hear comments from the  
11 Commission for Women. But it's ultimately the job of the Office of Consumer Protection  
12 to prepare the contract.

13  
14 President Knapp,  
15 Okay.

16  
17 Vice President Andrews,

18 Okay. All right. The next item was number 12. Should the Bill be amended to require the  
19 Director to refer potential criminal violations to the police department? The Director  
20 already has this ability to do that, and so we felt that it was better to leave that language  
21 as it is under current law, which allows the Director to do so for any case where they  
22 feel that there's criminal conduct. Thirteen - should the effective date of the Bill be  
23 extended to 180 days after the Bill becomes law to give adequate time for the  
24 development of the contract and to educate the public about the new law? And the  
25 committee said yes to that. I believe that there may be a couple of amendments still out  
26 that are going to be offered for consideration, and so that concludes the packet.

27  
28 President Knapp,

29 Thank you Council Vice President Andrews. Councilmember Berliner.

30  
31 Councilmember Berliner,

32 Thank you Council President Knapp. And let me just preface my remarks, if I could, with  
33 -- in my offering of an amendment with some observations. Unlike many of my  
34 colleagues, I was not part of the original conversations with respect to this Bill. I wasn't  
35 a cosponsor and I don't serve on the Public Safety Committee. So when this measure  
36 was reported out of the committee, I had to take a deep breath and say okay; what are  
37 we doing here? Why? And I confess that I approached this issue with a great deal of  
38 caution. I was concerned with respect to the unprecedented nature of our action here  
39 today. No other jurisdiction has done what we are contemplating doing. I was concerned  
40 about the legal issues related to enforceability that the Executive Branch and I both had  
41 with respect to this. I was concerned really about the reputation of our institution and  
42 whether or not we would be deemed forever to be the nanny government of all time.  
43 And I was concerned as to whether or not this was an appropriate action for local  
44 government to take. And I was concerned with whether the substantive advances that



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1 we're making here outweigh all those other considerations. It was a matter that I, like all  
2 my colleagues, reflected on at some length, and researched. And I came to the  
3 conclusion that in the end this proposal is truly meaningful. At the very least what it does  
4 is it ensures that our domestic workers -- and it affirms that our domestic workers have  
5 an occupation that is worthy of the respect and dignity that the law will protect. It  
6 ensures that those who are most vulnerable, mostly women, have some protection from  
7 exploitation. That this is unprecedented should not deter us as it did not and should not  
8 deter us on other environmental issues or health issues. But it should ensure that we  
9 are careful in the exercise of our authority and don't overreach. And I concluded that  
10 this struck the right balance with respect to that; that it threaded the needle of advancing  
11 important interests without overreaching. And that's particularly with the amendment  
12 that I will be offering now, amendment number one that I'll share with my colleagues. It  
13 was an amendment that came about as a function of conversations with the Executive  
14 Branch and myself with respect to enforceability. Because as the Chair of the committee  
15 observed, the Bill that emerged from committee really focused exclusively on what can  
16 only be deemed to be a unilateral offer of a contract; did not require a contract; did not  
17 require -- so the enforceability of whether did somebody really make an offer was up in  
18 the air. And what happens if that offer wasn't accepted, but the employment ensued.  
19 There were a number of issues with respect to enforceability that were very unclear in  
20 my mind and in the minds of the Executive Branch. This amendment will now ensure  
21 that one of two things happens. You either are made a bona fide offer and you sign it, or  
22 you are made a bona fide offer and you sign a waiver. And you say, you know, I'm  
23 comfortable with the relationship that I've had, perhaps for 10 years. Many of these  
24 relationships are very long-term relationships; not short-term. And many of them are  
25 healthy relationships; mutually respectful relationships; informal relationships; but  
26 nonetheless okay. What this amendment ensures is that for those who are in a  
27 relationship that is okay, we don't supersede that with the inflexibility of contractual  
28 relationship unless they affirmatively desire it. But they also have the backstop of being  
29 offered an agreement that specifies the terms. So worst-case scenario they have had  
30 an offer. If they want to change their status, they're in a position to do so. If they don't  
31 want to change their status, they can affirmatively choose not to. I think that's important.  
32 I think based on my conversations with Mr. Friedman and the Executive Branch that the  
33 conclusion with respect to this amendment is that it does make it more enforceable. So I  
34 do think that we've done something that is important. I think we have done something  
35 that needs to be addressed. I think it is something that has not been addressed  
36 anywhere. And I think we're making an important contribution, but a measured one. So  
37 my hat is off to the sponsors for bringing this measure to us. I took me a little while to  
38 catch up; my colleague likes to tease his colleagues with respect to that. He reminds us  
39 that some things are complicated and sometimes you just have to catch up. I've tried to  
40 catch up with respect to this, and have concluded that this is worthy of our approval with  
41 this amendment. So I offer amendment one for my colleagues' consideration.

42  
43 President Knapp,  
44 Is there a second?



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Councilmember Ervin,  
Second.

President Knapp,  
Seconded by Councilmember Ervin. Councilmember Trachtenberg.

Councilmember Trachtenberg,  
My comments are not specific to the amendment.

President Knapp,  
Okay, Councilmember Leventhal.

Councilmember Leventhal,  
Well I do want to say for the record that the advocates for the Bill are very concerned about this amendment. And I spoke to them a few minutes ago. I'm open to it, but I would like to ask Mr. Friedman, since this -- what I understood -- if Mr. Friedman could come forward. What I understood gave rise to this was a concern -- let me just walk people through some of the issues as I see them here, because I think they are very important. The Bill as introduced and as reported by committee imposes no obligation on the worker to sign anything. And when I first noticed that myself, the Bill was drafted at Mr. Elrich and my request, I said why is there no obligation on the worker. I mean should not there be a joint obligation on both sides. And maybe, Mr. Drummer, you could explain the reasoning why the Bill did not originally -- the Bill only puts the obligation on the employer to offer, negotiate and sign a contract; it does not place that obligation on the worker. That struck me as strange in the beginning, and, Mr. Drummer, could you explain the reason it was drafted that way?

Bob Drummer,  
Sure. What we were worried about is if you put a bilateral requirement that both parties sign the agreement and somebody files a complaint and Consumer Protection investigates it, you then got two people that are in violation of the Act. And you need to enforce the act and the sanctions against both the employer and the employee. And even if Consumer Protection felt they would just go after the employer, I'm sure the employer is going to be trying to bring in the worker too, saying well they didn't sign the employment agreement either. If you make it -- in other words, if you make both sides required to sign it, then you would be violating this law if you're working in the County without a written employment contract and you're a covered worker.

Councilmember Leventhal,  
And you'd be subject to penalties.

Bob Drummer,  
And both sides would be, right.



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1  
2 Councilmember Leventhal,  
3 Now is it not the case under Mr. Berliner's amendment that you'd also be subject to  
4 penalties if you're worker and you don't sign the disclosure statement or a contract?  
5

6 Bob Drummer,  
7 I don't believe so. I believe that the penalty would be for the -- it requires the employer  
8 to obtain either a written or a signed disclosure statement. It's up to the employer to get  
9 that.  
10

11 Councilmember Leventhal,  
12 Okay, so if we were to require an employee to sign the contract, if the employee fails to  
13 sign the contract then the employee may be subject to penalties and fines even if the  
14 employee never knew about the law, never availed themselves of the law; they would  
15 be subject to penalties and fines for failure to comply with the law.  
16

17 Bob Drummer,  
18 Although I'm not sure who bring the complaint in that case.  
19

20 Councilmember Leventhal,  
21 Right.  
22

23 Bob Drummer,  
24 You know, how we'd find out about it. But, yeah, if there's a situation where somebody  
25 is working without an employment contract and the worker goes to complain to  
26 Consumer Protection and there's no written contract, and they're both supposed to sign  
27 the contract, then they're both in violation of the law.  
28

29 Councilmember Leventhal,  
30 Indeed that would deter employees from protecting their own rights if you push the  
31 obligation on the employer and the employee, since it's like to be the employee who is  
32 going to complain. But if the employee is exposing themselves and say -- if you pass a  
33 law that says both the employer and the employee must sign and there is no contract,  
34 and neither one of them have signed, then the employee is not likely to complain  
35 because they would be exposing themselves to penalties and fines.  
36

37 Bob Drummer,  
38 That's what we were worried about.  
39

40 Councilmember Leventhal,  
41 That's what we were worked about.  
42

43 Bob Drummer,  
44



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1 But, you know, how it will actually work in the real world we're not sure. It as new to us,  
2 you know.

3  
4 Councilmember Leventhal,

5 Okay. Now, Mr. Friedman, what I understood gave rise to Mr. Berliner's suggestion was  
6 your concern that a complaint is filed, a worker calls you up and says I'm supposed to  
7 have a contract; I don't have one. And then employer says oh yes, absolutely I did offer  
8 a contract. And then it becomes he said, she said that you can't prove that the employer  
9 didn't offer it. So that this recommendation for the disclosure that a contract was offered  
10 and the employee voluntarily refused to sign you believe made it easier to enforce on  
11 your part?

12  
13 Eric Friedman,

14 Yes. What I try to do is make myself available to all Councilmembers and their staff to  
15 try and clarify things as much as possible.

16  
17 President Knapp,

18 Good cover.

19  
20 Councilmember Floreen,

21 Good answer.

22  
23 Eric Friedman,

24 And I'm not sure; maybe I caused more confusion than clarification. I was trying to give  
25 the Council in their deliberations some feedback in terms of enforceability. There are  
26 different degrees of enforceability from the perspective our agency. We would be  
27 charged with enforcing and administering this law. And there are different tools. One  
28 such tool would be the issues of the civil citation for violating a requirement under this  
29 law. And I had explained in many conversations that it would be difficult for our office to  
30 issue a civil citation and with representation from the County Attorney's Office, go to  
31 District Court to enforce a violation against an employer for failing to give something  
32 that's required by this law if it was a he said, she said prosecution. If that's the  
33 information that we had that level of enforceability would not be something that as a  
34 practical matter our office would be able to do. Now there are other levels of  
35 enforceability. We could write a letter to the merchant -- to the employer. We could call  
36 the employer and say that the nanny has alleged that you failed to provide her with this  
37 contract. And the employer could say yes I did, or say oh I forgot to; I'm providing it  
38 now. But we would not have the full extent of our enforceability action with respect to  
39 civil citations and going to small claims [inaudible].

40  
41 Councilmember Leventhal,

42 And with this disclosure that gives either a contract or a statement that the worker was  
43 offered a contract and voluntarily chose not to sign it; does that improve the  
44 enforceability?



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Eric Friedman,

Yes. And in talking to Mr. Drummer what we were talking about were at least if we had a document that was provided that has a signature from the nanny that says yes I was provided with this document, we would then have some documentation that would enable us to better prosecute the case; so that we could say to the employer if you provided the domestic worker with the contract, you need to either provide the signed contract or a signed disclosure form.

Councilmember Leventhal,

Okay. Now the concern that's been expressed by the advocates for the Bill is that employers will seek to do an end run around offering the contract; that employers will simply say to the worker, okay I'm hiring you, sign this. And what it will say is I offered you contract and you voluntarily chose not to sign it; that there never will be a contract, but instead there will be this one page waiver and that that's what will end up covering some of these employment arrangements. And again it will be a he-said, she-said situation. That's the concern that's been expressed to me by the advocates for the Bill. What do you think about that?

Eric Friedman,

Well I guess that is a possibility. I mean the concern is if there's an obligation on the part of the employer to do something to the extent that we have written documentation that the employer did it or didn't do it; that will provide us with more enforceability. But we are still able to make contact with the employer and express the concerns of the domestic worker. Does that answer the question?

Councilmember Leventhal,

Well I -- I think it's a dilemma. And it seems to me that if we pass this Bill, we are making assumption that, for the most part, our citizens will comply with it, as with other laws that we pass. I mean, we know that there will be some degree of noncompliance. So it seems to me having listened to the arguments of the advocates that the likelihood that this provision will provide greater opportunity to evade the law than the law itself because we all know that some employers will not comply with this law; any law you pass some people will not comply with. It doesn't seem that great that if an employer themselves is going to commit to a fraudulent document that exposes them also. So, I mean, I just want to put on the table because it's been raised with me the concerns of the advocates, and let Councilmembers wrestle with that in their own mind. I do understand the other side which is, it's very difficult to explain to my constituents why we're passing a law that only affects one-half of the employer/employee relationship. That's been a problem for me to reconcile. And I'm persuaded after hearing from Mr. Drummer the reason why. But I'm not sure the public will understand it. And so I think the benefit of this amendment is great enough that it obviously -- the employee is part of the transaction and the employee must either sign the contract or state that they're not





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1 signing the contract; that provides an answer to the question of what is the obligation on  
2 the employee.

3  
4 President Knapp,  
5 Councilmember Floreen.

6  
7 Councilmember Floreen,  
8 Well, reading this Bill has taken me back 35 years to law school 101; contracts. There is  
9 no contract if there isn't an agreement. And the only way you signify a meeting of the  
10 minds is having someone sign it. So this legislation without Mr. Berliner's proposal is  
11 meaningless otherwise because there is no contract; there otherwise would be no  
12 meeting of the minds one way or the other. He can have a con -- there just a law, there  
13 is no contract unless two parties have signed it; that's their indication of agreement. It's  
14 something that has troubled me about this. And I don't know how else you address this,  
15 because that -- I mean from the employer's point of view you spell out the duties. You  
16 shall do XYZ, and I agree. That's what I'm going to do and then return for that -- this is  
17 the deal. And I think the whole point of all this is to encourage clarity in employment  
18 relationship. But it's clarity on both sides of the table. This has been one of the issues I  
19 know that has been raised in terms of folks who are reluctant to enter into written  
20 agreements, which has caused some concern, I know, within the community, and has  
21 certainly caused me some concern about this. But if we're going to do this and say that  
22 there's a contract, there needs to be a contract. Now if the advocates don't agree with  
23 that, and I haven't spoken with them recently, that should be a cause for some concern.  
24 But that would be the point. There is no contract without an agreement -- meeting  
25 between the parties. And because this language here in terms of enforcement and  
26 compliance anticipates that there would be mutual rights of one sort or another; right,  
27 Eric?

28  
29 Eric Friedman,  
30 Yes.

31  
32 Councilmember Floreen,  
33 And you with your copious staff will be engaged in at least possibly some conversations.  
34 But to have a contract here under this legislation requires two to tangle, unless the law  
35 has changed. It's been a while since I went to contracts 101. But isn't that the case?

36  
37 Bob Drummer,  
38 Well if I could just answer that question.

39  
40 Councilmember Floreen,  
41 The law changed.

42  
43 Bob Drummer,



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1 No the law didn't change. But there would no written contract if there is both sides don't  
2 sign.

3  
4 Councilmember Floreen,  
5 Then you get into he-said, she-said.

6  
7 Bob Drummer,  
8 You could still have an oral employment agreement and many people work under that.  
9 The problem with that obviously is it's very difficult to enforce the terms and conditions.

10  
11 Councilmember Floreen,  
12 But it would be pretty unclear.

13  
14 Bob Drummer,  
15 Absolutely.

16  
17 Councilmember Floreen,  
18 What this is rectifying. How can you enforce a relationship that isn't clearly articulated?

19  
20 Bob Drummer,  
21 Well the Bill is not trying to enforce the terms of any employment agreement. It's just  
22 going to require that you, as an employer, offer to sign -- to negotiate and sign an  
23 employment agreement. And this amendment would give the employer the opportunity  
24 to -- if the worker -- and the worker has that right under the Bill, says I understand the  
25 terms and conditions but I'm not signing this -- a written agreement -- contract, then this  
26 would be option two. Okay, sign a disclosure statement that says you were given that  
27 and then, at least as far as an enforcement is concerned from the Consumer Protection  
28 Office, they would be able to say okay you complied with the law. The question about  
29 somebody trying to game the law by fraudulently getting a disclosure statement signed,  
30 you know, I guess that's possible and you can't -- it's very hard to legislate good  
31 morality.

32  
33 Councilmember Floreen,  
34 But at least that would clarify that there -- conversation has been had, that contract has  
35 been agreed to, or a contract has not been agreed to; one way or the other.

36  
37 Bob Drummer,  
38 Yeah, that at least the opportunity was given.

39  
40 Councilmember Floreen,  
41 Yeah, and that's that point of all this, as I understand it. Okay, thanks.

42  
43 President Knapp,  
44 Councilmember Elrich.



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Councilmember Elrich,

Yeah, I've come around to agreeing with Roger's view of this. I was not -- I didn't fully understand the implications of not signing a contract until the discussion with Eric and others around what would happen and would wind up being enforceable. And it seemed to me that creating an unenforceable law really didn't get us where we wanted to go. I think others are right in saying that any law can be broken, and that we in fact rely on the goodwill of 90% or 95% of the people to do what's required. And that's what most people will do. And no matter how we wrote this law whether we got more restrictive or less restrictive, there will be people who will choose to try to do otherwise. So I don't think you can make the perfect law or have the perfect enforcement system. I think that -- I try to picture what happens in this myself, and I'm -- if two parties negotiate a contract and you can't reach agreement on the contract, it's hard for me to imagine the worker then working. If I haven't agreed to somebody with what they're going to pay me and when I'm going to be there, not only don't I have a signed contract, but then why am I going to work with this person at all. It seems to me at that point there's no agreement on the terms of labor, then labor leaves the premises and goes someplace else. So part of me imagines that most things will be resolved by contract because that's what two people would -- that's what both people have to do in order to agree that somebody's going to come into your house and do work. But I do agree with having the disclosure because in the event, maybe for sentimental reasons as Roger has kind of suggested. I can't imagine doing this for economic reasons. But perhaps for sentimental reasons if you feel the contract unnecessarily muddies up the personal relationship that you've developed with your employer and your trusting and every thing has been perfectly fine, and you don't want to sign this contract, then the disclosure at least provides protection for an employer should anything happen. And then at least they can say I did offer the contract. Now we have some assurance that along with this disclosure statement the contract that was offered will be presented so we can at least see the contract -- because if I sign a disclosure statement it could be George's worst nightmare, which is I put the disclosure statement in front of you and don't offer a contract in good faith or do any of that stuff. So at the end of the day you've got a disclosure contract and the person could say I didn't understand it. He only talked to me about it, or she only talked to me about, and I never actually got the contract to say yes or no to. So it seems to me there ought to be something in here that requires that a, for example, an initial copy or a signed copy of the contract simply stating that the employee -- potential employee read the contract, not agreed to it, but read it, ought to be part of a submission. So the waiver and the initialed or signed contract saying I read it travel together. And that way there's no ambiguity about whether -- what was offered or whether anything was offered at all. And that would address, I think, the issue of -- or the concern that you would simply be putting the disclosure statement in front of somebody and they were tangibly putting a contract in front of somebody. I think it maintains Roger's intent at the same time.

President Knapp,



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1 Go ahead, and then Councilmember Leventhal.

2  
3 Councilmember Berliner,

4 If I could respond, I just make sure that you look at line 4 of the amendment, because  
5 the disclosure statement itself is a document "confirming that an employer presented a  
6 signed, written employment contract." So we are ensuring that in this situation where  
7 their fallback situation is here's the signed written contract; you either take the signed,  
8 written contract that is presented to you and if not -- and if you don't want that, then you  
9 can sign this disclosure -- this waiver. So I believe that the protection -- the precise  
10 protections that you are seeking are here. Now, again, there re people that can be -- act  
11 fraudulently. So you can't write enough language with respect to that.

12  
13 Councilmember Elrich,

14 I just wanted the paper contract, that which was offered to travel with the disclosure  
15 statement. Would there be a problem with that?

16  
17 Councilmember Berliner,

18 Yeah I can go along with that -- attached the -- attached to it, yeah.

19  
20 Bob Drummer,

21 That would get taken care of in writing the model disclosure statement.

22  
23 Councilmember Berliner,

24 I'm comfortable with that.

25  
26 Councilmember Elrich,

27 Okay.

28  
29 Bob Drummer,

30 And we could get that [inaudible].

31  
32 Councilmember Elrich,

33 As long as you include it somewhere in there. Because I want the elimination of the --  
34 okay.

35  
36 President Knapp,

37 Councilmember Leventhal.

38  
39 Councilmember Leventhal,

40 I think that's a great improvement and I thank Mr. Elrich and Mr. Berliner for taking that  
41 step. I think that's a very, very important point. I did -- I do feel the need to respond to  
42 the suggestion by my colleague that absent this amendment -- which I will support this  
43 amendment -- the Bill was meaningless. I'm not -- and neither is Mr. Elrich in the  
44 business of introducing meaningless legislation. But I want to talk directly to the



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1 advocates for the Bill here now, because we've had a lot of conversation about how will  
2 this be enforced and how will it work in practice. And obviously we'll find out how it  
3 works in practice in practice. But as we talked about this problem which was posed by  
4 not having the obligation to sign the contract on the worker, we hypothesized, and I'm  
5 repeating this because I think it's so important, that a worker might complain that no  
6 contract was ever offered or negotiated. An employer might say, oh, yes indeed, I did.  
7 And the Office of Consumer Affairs could not prove the point. I don't see that as a huge  
8 problem, because if the employer says, oh, yes, I did and here is the contract, then  
9 indeed problem solved. If the goal is to get a contract the employer would, under those  
10 circumstances, have to offer a contract. Obviously, on its face, a contract must be  
11 between two parties, and the sponsors of the Bill knew that in the first place. Of course  
12 we knew that a contract that both parties don't sign is not an enforceable contract. To  
13 suggest that it's meaningless not to compel both parties to sign a contract is -- does not  
14 negate the fact that a contract is only enforceable when both parties sign. What Mr.  
15 Berliner's amendment is hypothesizing is that there may be circumstances in which a  
16 worker would prefer to work without a contract. I think that's unlikely. I just don't see that  
17 happening. But if it gives comfort to Ms. Floreen and Mr. Berliner, I'm eager to pass the  
18 Bill. I don't see it as harmful for the very same reason, and this gets to what the  
19 advocates are saying. If the concern is that an employer will somehow seek to bypass  
20 the contract requirement by going straight to the disclosure requirement, first of all that's  
21 avoided I think by Mr. Elrich's point, because now the disclosure will be attached to the  
22 contract. But even absent that you go through the same procession. That is the worker  
23 says I was never offered contract. The employer says oh, yes, I did offer a contract. So  
24 Eric Friedman and the staff say where's the contract? The end result is you get a  
25 contract. So, again, problem solved. So I understand the concerns of the advocates, but  
26 I want to say the other end of it I think the alternative that the advocates proposed to  
27 me, that is just go ahead and require both parties to sign the contract, is worse precisely  
28 because, as I said earlier -- and I'm sorry to repeat myself but I think it's important. It will  
29 be a disincentive for workers to complain. If the worker, herself, is liable for fines and  
30 penalties for failure to sign the contract, why would the worker bring that to the attention  
31 of the government? The worker would be exposing herself to fines and penalties. That  
32 would make it less likely to be enforced in a complaint-driven process.

33  
34 President Knapp,

35 Okay, seeing no further discussion on the amendment, all in support of the amendment  
36 indicate by raising your hand; Councilmember Elrich, Councilmember Trachtenberg,  
37 Councilmember Floreen, Councilmember Leventhal, Councilmember Ervin,  
38 Councilmember Berliner, Council Vice President Andrews, and myself -- oh,  
39 Councilmember Praisner. That is unanimous. Okay. Any concluding remarks?  
40 Councilmember Trachtenberg.

41  
42 Councilmember Trachtenberg,

43 Thank you, President Knapp. Well this has been a long conversation that this body has  
44 been having now for a few months, I think close to six months. And I think it's been a



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1 really productive conversation. And I don't think I'd be surprising anyone by stating that  
2 at the beginning of the process I had some serious concerns about the Bill as proposed.  
3 But I am comfortable with the amendments that we have worked through, both the  
4 committee and here this morning. And clearly in my mind this is the first step of what I  
5 would be hopeful would be a few steps -- a handful of steps that this body could take to  
6 support workers here in the County -- women workers. But I have to suggest that I  
7 respectfully disagree with my colleague, Councilmember Elrich, about the fact that this  
8 is related to domestic workers and not necessarily related to the plight of immigrant  
9 women. Because I very much believe that they are linked. And I've got opinions about  
10 this, not just because of the conversations that I've had with sides of the issues the last  
11 few months, but I've got opinions based on experiences that I've had within the feminist  
12 community. I know many of you know that I've had the privilege of sitting on the national  
13 NOW board for a number of years, where I serve as the Mid Atlantic Regional Director.  
14 And I've spoken to domestic workers out in California. I've spoken to domestic workers  
15 down on the Mexican border; some that are in federal facilities or had been before they  
16 were deported. And I feel very strongly about the fact that the only way that we're really  
17 going to comprehensively address the issues for immigrant women and domestic  
18 workers, in particular, is through comprehensive reform on a national level. There are  
19 issues relating to sexual harassment in the workplace, not just the Fair Labor Standards  
20 Act but the Occupational Safety and Health Act as well. All those things need to be  
21 amended in my mind. But I want to speak this morning -- or this afternoon just very  
22 briefly to one issue, and I would believe that this would be a reasonable extension of the  
23 commitment that this body is making this morning by passing this piece of legislation,  
24 which is we really need to prioritize the social services that are available to women in  
25 this community, including domestic workers. There is an urgent need for more  
26 translation services to be available in the judicial system that is vitally important for this  
27 population that we want to empower. We also need to aggressively fund culturally  
28 sensitive health services, which we really have not been able to do, and I stress that as  
29 we look towards next year's budget, because I am very mindful of the fact that the  
30 vulnerable are indeed more vulnerable when we are in difficult fiscal times. And the  
31 other thing that I would like to see us aggressively fund and provide resources in would  
32 be public outreach and education on a whole host of issues that are important to  
33 immigrant women, but again, very important to domestic workers. And even if all we do  
34 is provide forums in the community that provide information about citizenship, around  
35 employment, around contractual terms, around services that can be accessed and  
36 benefits that can be applied for, we have an obligation to do that. And I just want to  
37 stress to my colleagues that again I see this within the context of the law and what we  
38 can do as a step forward. And I commend both Councilmember Elrich and Leventhal for  
39 bringing the issue up. I think we have again worked productively as a body  
40 collaboratively. And it would be my hope that in the years to come we'll fund  
41 aggressively the services that really need to be provided again to immigrant women that  
42 live and prosper in this County.

43  
44 President Knapp,



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1 Thank you very much. I see no further discussion on the Bill. We have before us action  
2 on Bill 2-08, Consumer Protection, Madam Clerk, if you would call the roll.

3  
4 Council Clerk,  
5 Mr. Elrich.

6  
7 Councilmember Elrich,  
8 Yes.

9  
10 Council Clerk,  
11 Mr. Praisner.

12  
13 Councilmember Praisner,  
14 Yes.

15  
16 Council Clerk,  
17 Ms. Trachtenberg.

18  
19 Councilmember Trachtenberg,  
20 Yes.

21  
22 Council Clerk,  
23 Ms. Floreen.

24  
25 Councilmember Floreen,  
26 Yes.

27  
28 Council Clerk,  
29 Mr. Leventhal.

30  
31 Councilmember Leventhal,  
32 Yes.

33  
34 Council Clerk,  
35 Ms. Ervin.

36  
37 Councilmember Ervin,  
38 Yes.

39  
40 Council Clerk,  
41 Mr. Berliner.

42  
43 Councilmember Berliner,  
44 Yes.



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Council Clerk,  
Mr. Andrews.

Vice President Andrews,  
Yes.

Council Clerk,  
Mr. Knapp.

President Knapp,

Yes. Bill 2-08 passes unanimously. Thank you very much. We are now going to turn to the action on State Transportation Project Priority Letter. We've got a lot of folks here who have been waiting for that. We'll go a head and try and dispose of that. We may start our Public Hearings a little bit late, depending on how long this takes. The Chair of the Transportation and Environment Committee assures me that this will be a fairly expeditious activity.

Councilmember Floreen,

I hope so. Mr. Berliner was not able to join us at our committee meeting, but he has informed me that he supports our recommendation to the full Council, so it's a 3-0 recommendation to the Council to adopt. Everyone okay back there? To adopt the draft letter as is before you on circle 7 through 9. Basically this is an update of the letter that we sent to our delegation in February of 2007. The point of this of course is to establish County priorities for the purposes of State, capital program -- .

President Knapp,

Hold on. Folks. Folks if you could just keep it down as you exit the room. We're still trying to get the next -- next issue done. Thank you.

Councilmember Floreen,

The point of this is to establish -- reaffirm Council priorities for the purposes of conversation with the members of the delegation, as well as with the Governor as he puts together his transportation CIP, which is an annual event. We have tried very hard to not make a lot of changes on an annual basis. Our intention is to be clear and focus on priorities. We have a mix of transit and roadway projects here reflecting the kind of balance that this Council has been committed to in a long-term fashion to achieve mobility within the County. We also have tried to include in our analysis a can-do approach to transportation problem-solving. We know there are a limited number of resources available to fund state projects. We'll use these projects as we look at our appropriation capacity. And I am absolutely confident the State of -- the city of Gaithersburg will give its own attention to how it can fund through a bonding approach projects that it views as significant importance to the city of Gaithersburg. We have also considered, and had a conversation with respect to Growth Policy standards, how these





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1 priorities meet our mobility objectives within the Growth Policy. And we discussed that  
2 within the committee meeting. But we have -- Glenn has broken down the projects.  
3 Historically we have always addressed our priority rankings for construction funding for  
4 roadway projects, our priority rankings for highway and bikeway projects, and then our  
5 priority rankings for transit projects. What we did in the letter was to reiterate what we've  
6 said about the Purple Line and the corridor cities transit way. What we have said in the  
7 past with respect to advocating for the beltway widening for HOT or HOV lanes and the  
8 I270 widening and analysis. What we have added in here is language with respect to  
9 BRACK, which really hadn't been in our previous letter, as I recall. The Planning Board  
10 offered us some comments on this, and Glenn has shown you in his memo where there  
11 is concurrence, which is largely the case. There are some small elements of  
12 disagreement, but by and large, we are in full concurrence. The city of Gaithersburg  
13 has corresponded with us, and you've got an addendum to your packet that response to  
14 what the city has raised. And we feel very comfortable that our list reflects County  
15 priorities that are -- the list also reflects some of the conversations that have already  
16 begun between the County Executive staff and the State in negotiating critically needed  
17 solutions to our transportation system. And as I said, there really isn't too much that's  
18 new at all here. So let me ask Mr. Holmes if you'd like to make a comment and then  
19 Glenn can take Councilmembers through specifics or answer questions that they might  
20 have.

21  
22 President Knapp,  
23 Director Holmes, turn on your microphone.

24  
25 Councilmember Floreen,  
26 Press your button there.

27  
28 Arthur Holmes, Jr.,  
29 Thanks to the members of the Council for allowing us to come forward. As you indicated  
30 here, we are in agreement with the Council staff on the items in the priority list. We do  
31 understand that there is some concern on the part of the city of Gaithersburg about  
32 breaking up the elements for the Watkins Mill Road where we broke the bridge and the  
33 bypass, or I mean the bridge and the interchange because of one, the cost, and number  
34 two, we are already in some negotiations with the State on the bridge using the funds  
35 from the Transportation CIP wherein we were given the [inaudible] authority to work with  
36 them under MOU. So having said that I have no other corrections. We are in agreement  
37 with the Council staff.

38  
39 Councilmember Floreen,  
40 And the committee.

41  
42 Arthur Holmes, Jr.,  
43 And the committee, sorry.



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1 Councilmember Floreen,  
2 Right. And I don't know if Councilmembers have questions. I think Mr. Andrews does.

3  
4 President Knapp,  
5 Mr. Andrews does.

6  
7 Councilmember Floreen,  
8 Otherwise it's pretty pro forma.

9  
10 President Knapp,  
11 Yeah, the issues as it relate to Gaithersburg both Councilmember Andrews and I have  
12 both been approached vigorously by the areas we represent. So I'll turn to the Council  
13 Vice President for his discussion.

14  
15 Vice President Andrews,  
16 Thank you. All right, thank you. Well I know that the committee has worked over this  
17 over the years, and that there's a balancing act here. But I am concerned about the  
18 recommendations regarding Watkins Mill and also Montrose Parkway. And I don't  
19 support either of those changes as proposed. I know the city of Gaithersburg is very  
20 concerned about the proposal to separate out the two projects feeling that it will likely  
21 delay further the prospects of getting the interchange built if they're broken out. And I  
22 know that they have made development decisions based on them occurring at the same  
23 time. We all hope it's as soon as possible, but we know all these projects face the  
24 hurdle of State funding, which is tight. I want to give -- I want to ask the Mayor since he  
25 has taken the time out to come, and he has been sitting here a long time, to comment  
26 about the city's particular concerns. I'm concerned that the city wasn't notified a head of  
27 time about a change this substantial and given the opportunity to weigh in prior to it  
28 getting to the full Council. And I hope that will not happen again. But I'd like to ask  
29 Mayor Katz to comment on the proposed change to Watkins Mill.

30  
31 Mayor Sidney Katz,  
32 Thank you Mr. Vice President. We sincerely appreciate you having us here this morning  
33 and letting us speak. I actually am not the expert; as you might guess, the expert is  
34 sitting to my right, Mr. Fred Felton. And if possible I'd like to ask him to make some very,  
35 very quick -- quick comments. This obviously is an extremely important to the city and to  
36 the County, and that's one of the reasons that the city, even though this is a state  
37 highway, is actually the main provider of the land itself, as we also have provided the  
38 land off from the same developer for the Sixth Police District at no cost to the County.  
39 So we obviously are very concerned and we obviously want to work with the County to  
40 make certain that this comes to happen.

41  
42 Fred Felton,  
43 Thank you. For the record, Fred Felton, Assistant City Manager. And the city and the  
44 County and developer are under contract, among other things, to work together and



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1 individually with the state towards the acceleration of final design and construction of  
2 this state project, which is the Watkins Mill Road interchange and ramps. I don't know  
3 the correct answer on splitting the projects. I have a lot of respect for Edgar and Art.  
4 They feel strongly that splitting the projects make sense; maybe it does. As  
5 Councilmember Andrews -- Council Vice President Andrews indicated we weren't  
6 consulted. We were just having those discussions over the last few days. But the real --  
7 biggest concern in the Mayor and the City Council is this project was in 2005 ranked  
8 number three; in 2007 ranks number two. Number one project is completed, so the  
9 Watkins Mill Road interchange should move to number one. If it makes sense to split it  
10 up, it may well I just haven't had a chance to fully understand the issues, the actual  
11 ramps ought to be priority number two. There has been nothing in your background  
12 packages. There's been no discussion on this committee of any reason why the  
13 Watkins Mill interchange is slipping six places on the list. Certainly the argument could  
14 be made that taking an action that would allow the bridge to come first is accelerating  
15 the project, but putting the ramps in your funding and putting \$2.6 million worth of State  
16 projects between the ramps and the interchange construction itself to me is -- it does  
17 violate our agreement. It does not make sense. Watkins Mill Road, the entire project,  
18 the folks from Public Works say it remains important. So we strongly would request that  
19 if you separate the projects, and again that may make sense, that number two be the  
20 interchange itself. We believe that's in keeping with our agreement. We believe it makes  
21 sense from a [inaudible] perspective. I've submitted a mountain of paperwork to all of  
22 you. I hope you've had a chance to read it. And I'm prepared to answer any questions  
23 you may have.

24  
25 Councilmember Floreen,  
26 Well let me just say, and I'll turn it over to Glenn. This is also a project which the State  
27 has -- the County has put some of its special bond money towards funding for the  
28 design, as I understand it.

29  
30 Edgar Gonzalez,  
31 Yes, as part of the agreement. We have been working with the City very, very closely.

32  
33 Councilmember Floreen,  
34 And I would just say we would welcome the city's contribution of cash through a  
35 bonding process as the County is doing with its negotiations to move this forward. We  
36 appreciate that the -- I mean there's no question that this is important. So are the other  
37 projects within the list. We are all trying to work together. We very much value what the  
38 city has negotiated so far with developers. That's how you do these road projects, and  
39 the developers are building a good portion of this. But there's a lot of money involved to  
40 build the whole ball of wax. And as I said, I think we'd very welcome the city undertaking  
41 to help with the cash side of this with the County the way we're trying to do for a variety  
42 of these projects. There's no disagreement about that. We also do have a variety of  
43 issues up there in that neck of the County, particularly because of the moratorium  
44 situation in Gaithersburg under our Growth Policy rules in Gaithersburg and



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1 Germantown. And that's why we have some other projects in this list, Copper Road and  
2 Woodfield, that will help in this analysis. It's all a question of working together to get  
3 things done. There's no question about that. And it is number one fundamentally on our  
4 list otherwise. Glenn, do you want to go into more detail on the -- Mr. Andrews, did you  
5 want some more details?

6  
7 Vice President Andrews,  
8 Well, I'd like to just in fairness hear Glenn's argument briefly.

9  
10 Glenn Orlin,  
11 That's Glenn's argument, it's the Planning Board's argument, it's the T&E's Committee  
12 argument so. We've been talking about this for a long time. Actually, this is not -- should  
13 not be a surprise. We actually started talking about this issue back in the spring during  
14 the budget -- actually in the winter during the budget when we were talking about  
15 Montrose Parkway. You'll recall T&E Committee and the Council talked about needing  
16 to accelerate the missing link of Montrose Parkway as on the priority list, and the debate  
17 at the time was whether or not the I270 Watkins Road bridge, not the interchange but  
18 the bridge should be number one or number two, with Montrose Parkway moving up. So  
19 we've had this discussion since winter. The Planning Board discussed this priority list in  
20 June, about three weeks ago I think it was, Larry. And it came to T&E of course nine  
21 days ago. I apologize for not having called directly to the Mayor or Mr. Felton about this,  
22 but I didn't call anybody else either. I didn't call the city of Rockville about their projects.  
23 I didn't call the Civic Associations in Aspen Hill or North Bethesda or Eastland County or  
24 anyone else. We really expect all of our constituents to follow what the Council is doing,  
25 and if there are concerns to [inaudible] raising all along. This is after all a County  
26 Council/County Executive priority list. We fully expect that the city may want to weigh in  
27 separately with the State anyway. But it's a County list. We're looking at County  
28 priorities. Given that, what we decided was, and just amongst the staff and we made the  
29 recommendation to our -- our betters -- the Executive, the Council and Planning Board  
30 in the case of Larry, was that the I270 Watkins Road interchange was an extremely  
31 expensive project which could likely not be built all in one piece. It's \$140 million of the  
32 cost that's yet to be programmed. Corollary to this is the 355 Montrose interchange  
33 itself. You probably don't remember this, but more than 10 years ago that was one  
34 project. Actually it's been a project in the State's program for a quarter century. And for  
35 many -- it came from Connie Morella's initiative based on the ICC study back in the 70's  
36 and early '80's. And the idea was to build a great [inaudible] interchange between 355  
37 and Montrose Parkway, and carry it over the railroad tracks and connect to Parkline  
38 Drive. About 10 years ago, 12 years ago or so, the State said we can't afford to do all  
39 this as one project; we're going to split it into two phases. And it's been that way ever  
40 since. And we're only now at the point where virtually this last couple weeks where that  
41 first phase is under construction; and that only with the help of the County by  
42 accelerating some funds. And the Council talked about this spring -- or this past winter  
43 actually, trying to figure a way of accelerating the second phase, which is what we're  
44 recommending in this priority list. So part of the issue is with Montrose -- with Watkins



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1 Mill at the 270 is to keep this -- the bridge -- the connection as a number-one priority  
2 because it's been pointed out to you, we already have the developer with the aid from  
3 the city and from the County extending Watkins Mill Road over to I270. There is an  
4 agreement that he will also build from 355 over to 270; although that's not quite under  
5 construction yet. And you have a situation where we've all put in a lot of money for road  
6 which right now is just two cul-de-sacs. And we'll make some utility out of it. So the next  
7 best thing is to connect these two roads now. That will provide access to this area. It will  
8 provide actually not just better local access for folks from Montgomery Village now to  
9 Metropolitan Grove Metro -- Mark Station, but will also provide better regional access for  
10 folks in this area. Because all their movements to and from this area can be done with  
11 right turns. If you're coming down 270, if you want to get into this area, you make a right  
12 turn at the interchange, a right turn at either First Field or Clopper, a right turn against  
13 traffic on Clopper/Watkins Mill Road, and a right turn back into the development. In the  
14 evening you'd go to the rest to the clockwise way. You go down Watkins Mill Road to  
15 355, make a right turn on 355, a right turn on Montgomery Village Avenue, and a right  
16 turn on 270 and off you go. Much, much more smoothly than if you have to do it today  
17 where you have to make left turns at difficult intersections, very difficult intersections. Is  
18 it as good as the full interchange? Of course not. You want to have the full interchange  
19 here, and all the parties involved with the interchange to happen. But the question again  
20 has to do with priorities; what's the highest need now? Everything else on the list above  
21 the T&E's Committee's list is areas where the roads are over-congested now, or has  
22 been a commitment in the case of Brookfield Bypass for 35 to 40 years. That's not a  
23 newcomer. And so the question was given all the priorities, which we do, and we came  
24 up with the list that we did, the Montrose Parkway link is similar to the Watkins Mill Road  
25 in that we are building or have built or have under construction or have programmed all  
26 the roads leading to this missing piece in the middle, and we want to move forward on  
27 the missing piece in the middle. I understand from Gaithersburg's perspective that is the  
28 most important project, certainly it is. There's another project actually that's just above it  
29 on the T&E's list, which is widening the intersections along Clopper Road, which we had  
30 a little discussion before the meeting here that certainly at least at the staff level; we're  
31 all in agreement that if the County wants -- Council wants to move that project -- the rest  
32 of the interchange above Clopper Road that would be fine with us too. But really  
33 anything north of there on the list, you're now entering into priorities which are -- ones  
34 where congestion is much more severe right now with existing traffic. And that's our  
35 position.

36  
37 Councilmember Floreen,

38 So you're proposing that there's some agreement we could move number 7 -- .

39  
40 Glenn Orlin,

41 Up to number 6.

42  
43 Councilmember Floreen,



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1 Up to number 6; basically switch that. That serves the same -- same portion of  
2 Gaithersburg.

3  
4 Glenn Orlin,  
5 The Planning Board had recommended actually that it be number 8.

6  
7 Councilmember Floreen,  
8 That's in circle 8.

9  
10 Glenn Orlin,  
11 So the Planning Board's recommendation, which was number 8, and the T&E  
12 Committee's recommendation was to move it up a slot to number 7; and we're now  
13 saying that we can move it up to number 6.

14  
15 Councilmember Floreen,  
16 We can move it up a little further in response.

17  
18 Fred Felton,  
19 That would still do very little in the way for us [inaudible].

20  
21 Councilmember Floreen,  
22 Well, remembering that your part of a -- well the challenge for all of this is we've got big  
23 problems, collectively and individually. And we need your very aggressive help in finding  
24 revenue sources and moving the state along; and urging our -- the members of the  
25 delegation and the Governor to help us on this.

26  
27 Mayor Sidney Katz,  
28 Which we have.

29  
30 Councilmember Floreen,  
31 As you know, the dollars are very constrained. But that is part of the challenge. But I  
32 think the committee would be fine with this one.

33  
34 President Knapp,  
35 No, I just have two quick questions. One, how long did it take us to get the last number  
36 one funded from the time it became the number-one project?

37  
38 Glenn Orlin,  
39 Oh, boy, years. In fact once that -- I should add a caveat. The number-one priority,  
40 which came off of the list, is the Georgia Avenue/Randolph interchange, which has been  
41 programmed in the adopted CTP by the State in the last year. You've all heard the  
42 same information that we've heard which is that the State's revenues are dropping;  
43 they're lower than what was expected. We haven't heard from them what actions they're  
44 going to take to rectify that. There's the concern that some of the projects that we got in



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1 the last revenue increase may be un-projects soon. We won't know that till the summer.  
2 But for the time being, we're going to assume that the State will stand by its word, and  
3 that the fact that they program something explicitly in their CTP for construction it will go  
4 forward. But if for some reason that project gets deprogrammed, it should go back to  
5 number-one on the list.

6  
7 President Knapp,  
8 And what are the segmented costs. I mean, I understand in your footnote you say we  
9 don't know what they are, but -- .

10  
11 Glenn Orlin,  
12 Yeah, unfortunately we don't.

13  
14 President Knapp,  
15 [Inaudible] say if you're going to go from \$140 million for a total project, you've got some  
16 ballpark as to how that breaks out.

17  
18 Glenn Orlin,  
19 We think it's well less than half of that is the bridge, but we don't know any more than  
20 that. The State has been reticent to give us a number yet because they're still working  
21 on some of the details with that bridge. The problem is because the streams that run --  
22 sorry. The streams that run to the west side of 270, and plus the -- they're still a little bit  
23 up in the air as to what they're going to do with express toll lanes. The exact location of  
24 I270, which is being planned right now, is up in the air. They'll know this in the next  
25 couple months. We're not talking years. That will depend -- that will drive the decision --  
26 how long the bridge will be.

27  
28 President Knapp,  
29 More optimistic [inaudible] on 270, but maybe. Do we have -- if the bridge were to be  
30 built and then the interchange to be done later, what does that then do to the bridge  
31 during that interim period? Does the bridge then have to be further widened?

32  
33 Glenn Orlin,  
34 No.

35  
36 President Knapp,  
37 Does it then [inaudible] showing [inaudible].

38  
39 Glenn Orlin,  
40 The bridge would be -- the six-lane road being built on either side of the 270 this will be  
41 a six-lane bridge, so it will be entirely a six-lane road all the way from 355 to Clopper.

42  
43 President Knapp,



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1 [Inaudible] so if there were constructed as it is, it will be six lanes and then all we do at  
2 the later point would be to add the interchanges.

3  
4 Glenn Orlin,  
5 The ramps.

6  
7 President Knapp,  
8 Or the ramps.

9  
10 Unidentified,  
11 The ramps [inaudible].

12  
13 Glenn Orlin,  
14 The ramps and the railroad improvements along 270 for the merge areas, the diverge  
15 areas and such.

16  
17 Edgar Gonzalez,  
18 And the acquisition of the additional right-of-way that may be needed; now obviously the  
19 city is in a position to possibly get one more development that will help with the right-of-  
20 way acquisition, which will help with the overall implementation of the project. The one  
21 thing that I want to state for the record is that we are pretty much in compliance with the  
22 MOU that we have with the city. We have been working very closely with them  
23 [inaudible] mostly. And these actions will in fact accelerate the implementation of this  
24 project. If we wait to get \$140 million, we'll be waiting for a long time.

25  
26 President Knapp,  
27 You can't guarantee that if we -- for half of a \$140 million we won't wait for a long time.

28  
29 Arthur Holmes, Jr.,  
30 That's exactly right. No, we can't, and I wouldn't want to be that optimistic. On the other  
31 hand, if you don't have a bridge there you have a road going to nowhere. So if you want  
32 to make a priority within that work group, you'd say let's do something with the bridge.  
33 And so that is how we went along and that's the kind of thought process we went  
34 through.

35  
36 President Knapp,  
37 Councilmember Elrich had a question.

38  
39 Councilmember Elrich,  
40 That's what I -- I guess my opposition to some of these projects is pretty well  
41 established. I do not support Montrose Parkway East. I have reservations about how the  
42 grades separate interchange at Randolph is going to be done, but apparently something  
43 is going to be done. But I think there's a more fundamental question in here. I mean  
44 other than corridor cities and the Purple Line; this is all roads all the time.





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Councilmember Floreen,  
That's just page 8.

Councilmember Elrich,  
Well it's page -- I'm looking at my list on page 2, circle 2; I'm looking at what sits at the bottom of circle 2. You know, the projects for development and evaluation, and the projects -- and the first 14 projects at the top. You know, this is primarily a road building. And we've got our other two projects in there - our Purple Line and CCT.

Glenn Orlin,  
Well the reason for that -- the reason for that -- the letter is divided into four sections. The first section are the mega-projects, which we really don't have control over; we can weigh in, we don't have control. And you're right, the Purple Line and the CCT are part of that. The second list are all the projects which are in the D&E program now in the County. And there aren't any transit projects in the D&E program right now, except for the Purple Line and the CCT. And so that's why we have the last two lists. One is a list of highway/bikeway projects, which we'd like to see go into D&E. And other is transit projects we'd like to see go in D&E. We have to go that first step first to get them funded for -- .

Councilmember Elrich,  
I guess my problem is that this problem of transportation I the County isn't like some brilliant new discovery. And the need to go -- move to mass transit I don't think is a sudden revelation. Yet we continue, you know, the tail of the dog is the mass transit projects. And these other projects are at the front end of the line. Even if they go to D&E. Just thinking about what we're confronting with corridor cities' transit way. I don't know how many of you honestly believe you're going to get money for both the Purple and corridor cities. I mean maybe you believe that, maybe you don't. I personally don't think we're going to get both. I think we're going to be lucky if we get one. And if we only got one, I would certainly want the Council to take the position that any other transportation dollars that are available to the County ought to go to fund the other mass transit project. As much as these roads might be in there, do you want the CCT or not? Because if these other projects are going to gobble up available state funding, and that's what we tell the State our priorities are, then the CCT or the Purple Line, whichever one doesn't get funded, is going to sit there for a very, very long time. Now I don't know whether you all have seen Rich Madelino's letter -- pass it down. This is Rich's letter to his constituents following the State briefing. But I think some things are important; I think they bear saying out loud. There's the comment about the declining gas tax and titling tax are below estimates. The DLS reports that current transportation program is unsustainable in the physical environment. As a result projects will have to be eliminated from the program plan when the new six-year plan is released this fall. So something is going to get cut. Then he goes on to say, and this was new to me -- compounding our transportation funding problem will be a lack of capacity. We always



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1 talked about oh the State could bond more. Well is says should any new revenue  
2 become available -- there's a lack at that capacity -- during the briefing State Treasurer  
3 Nancy Copp reported the State will exceed its debt capacity guidelines next year for the  
4 first time in decades; Maryland has a self-imposed debt limit of 3.2%. It goes on to say  
5 that the State has issued bonds more aggressively to pay for projects such as new  
6 schools, roads and prisons. With the slowdown in income growth we now exceed our  
7 debt limit. It's an extremely troubling development; one that is -- one that the  
8 mainstream media did not report. So what I read out of this is greater and greater  
9 constraints on funding. And what I would like out of, you know, it seem to me the  
10 Council ought to do is make clear that with greater, greater restraints on funding the  
11 priority is the two transit projects.

12  
13 Glenn Orlin,  
14 It actually says that.

15  
16 Councilmember Elrich,  
17 [Inaudible] projects have to wait in line.

18  
19 Glenn Orlin,  
20 It actually says that. On circle 7 is the letter. Look at circle 7, and in the first page which  
21 is -- .

22  
23 Councilmember Floreen,  
24 First page, second paragraph.

25  
26 Glenn Orlin,  
27 The most important projects, the regional ones, it doesn't list them all like we used to. It  
28 actually says in the second paragraph -- I'll just -- getting to the end of it. Accordingly,  
29 the two major transit ways, the CCT and the Purple Line, receive our highest priority.

30  
31 Councilmember Elrich,  
32 But I think we need to be clear and say that if the choice is funding a dribble of money  
33 for roads, we'd rather accumulate that money for the construction of the transit projects.  
34 Because my fear is people will give us 25 million or 30 million for a road project, and  
35 that the transit projects will languish. And I think we need to come up with stronger  
36 language saying this is really where we need to put the investment. Because, I mean,  
37 I've talked to [inaudible] too, and you know his comment on the County's priority list is,  
38 which priority list. Which are your real -- which are our priorities?

39  
40 President Knapp,  
41 Thank you. I think we've said very clearly in paragraph two.

42  
43 Councilmember Floreen,



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1 Let me draw your attention to page 7 circle 7 of the draft letter, which, you know, it's not  
2 fair to say we have not focused on transit. The bulk of the money that the County has  
3 advanced has been for the Glenmont Metro Station to facilitate transit; to the Bethesda  
4 Metro Station to facilitate the Purple Line. And this doesn't even include the Transit  
5 Center in Silver Spring, which is a major money eater and which became -- it became a  
6 County project to get the project completed. So I think it's incorrect to suggest that this  
7 Council hasn't been fighting for these dollars for a long time. In fact, has used this  
8 revenue source that we put together to advance these projects. Our challenge is we've  
9 got a lot of people who require mobility on the roadways. People don't disagree with  
10 that. And frankly, are the rules we have enacted, I'll say it again, focus on highway  
11 mobility -- not my idea. But that's what the rules are. So -- and our residents see the  
12 congestion experience on the road and we -- I'm sorry you weren't able to join us. We  
13 had a significant conversation on the highway mobility report, which -- at our committee  
14 meeting, which focused on the congestion issues; those all being on state roads. And  
15 we are quite committed to addressing the transit alternative and solutions. So there is a  
16 balance that we are trying to achieve here, both in terms of our local congestion  
17 priorities and our regional transportation priorities. There's no question the 270 situation,  
18 it's not just Montgomery County. The [inaudible] which is Corridor Cities Transit way, the  
19 270 widening issue. How are we going to address that? It's a major State issue.  
20 Likewise, the Beltway issue and the Purple Line proposal are both regional issues,  
21 which are major State issues as well; all of which are really hard to address,  
22 complicated and costly. But I'll tell I've been in Annapolis almost every year for the past  
23 six years talking with them about the funding for transportation, which pretty much goes  
24 nowhere. And so no one is shocked about what Rich is reporting because this is a fact.  
25 And if you want to take it a level further, the Feds are in the same situation. So the best  
26 we can do is list our priorities, and figure out ways to advance them collectively. And  
27 that's really all this is. It takes into account everybody's priority. Not the least of which is  
28 things like the Brookville Bypass. And those poor people have been advocating for that  
29 for -- Art.

30  
31 Arthur Holmes, Jr.,  
32 [Inaudible] 40 years.

33  
34 Glenn Orlin,  
35 35 to 40 years.

36  
37 Councilmember Floreen,  
38 Yeah. These are all balancing acts with different meanings to different constituencies.  
39 But it's not intended to minimize any one element of the highway package.

40  
41 Councilmember Elrich,  
42 I think wanted it minimized, whether or not it's intentional that's intentional.

43  
44 President Knapp,



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1 They're looking for excuses to some degree too, but, okay. Further discussion? Council  
2 Vice President Andrews.

3  
4 Vice President Andrews,  
5 I'll make motion and maybe that will move things along. I would move that we move the  
6 Watkins Mill Road extended complete interchange up to number two, and move the  
7 Rockville Pike Montrose Parkway East back to -- put that at number 7; so they're trading  
8 places.

9  
10 Councilmember Elrich,  
11 And seconded.

12  
13 President Knapp,  
14 Alright, we have a motion before us to move number two to number seven, and number  
15 seven to number two, on circle eight.

16  
17 Councilmember Floreen,  
18 Let me just say if we do that, I will ask my colleagues to explain to the residents of North  
19 Bethesda why we have allocated money from Montrose Parkway East, and we are  
20 advancing an intersection in the middle, and thereby -- by creating a road to nowhere  
21 that ends where the biggest problem, frankly, is; which is the bridge that takes Montrose  
22 Road over the railroad tracks, which is this segment that is number two. We really need  
23 that bridge over the CSX.

24  
25 Glenn Orlin,  
26 I also ask, this is supposed to be a joint letter. It's been in the past. Is the Executive  
27 agreeable to that? Do you know if he is?

28  
29 Edgar Gonzalez,  
30 Yeah, the Executive -- well.

31  
32 Unidentified,  
33 Go a head.

34  
35 Edgar Gonzalez,  
36 The Executive was briefed on our priorities, and he agreed with the priorities that are  
37 presented in the joint letter. The [inaudible] the issue we want to connect the  
38 development within the city of Gaithersburg. We want the economic development in  
39 North Bethesda as well. You are considering approval of the Twin Brook Sector Plan.  
40 White Flynn Sector Plan is also coming. You have millions of square feet of  
41 development and thousands -- 16, 17,000 homes in the pipeline that will be supported  
42 by the project that we have as priority number two. So that's why the County Executive  
43 had put it as number two as well.



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1 Vice President Andrews,  
2 It would still be two spaces higher than it was.

3  
4 President Knapp,  
5 Councilmember Leventhal, on the amendment.

6  
7 Councilmember Leventhal,  
8 Well I just am -- I recall years of debate both before I got on the County Council and  
9 after where the accusation about the County-built portion of the Montrose Parkway was  
10 that it was a road to nowhere. If the opponents oppose -- now that's a moot question,  
11 because it's been built. It's about to open. If the opposition remains that it's a road to  
12 nowhere; that's not a very strong justification for preventing making it a road to  
13 somewhere. And, you know, also -- I appreciate my good friend from District 3 wants to  
14 advocate for advancing the priorities in District 3, that's why we have a balance on the  
15 County Council between at-large members who seek to meet the needs of everyone in  
16 every part of the County, which I think the T&E Committee's recommendations do a  
17 fairly good job of. I think that if I were -- I mean I have the great respect for the  
18 gentleman from Gaithersburg advocacy for Gaithersburg; he's doing exactly what he  
19 should do. But I will not vote for his amendment.

20  
21 Vice President Andrews,  
22 Let me just say I'm very selective in the road projects I support, and this is one that  
23 makes a lot of sense, which is why I support it.

24  
25 President Knapp,  
26 You found one. Councilmember Berliner.

27  
28 Councilmember Berliner,  
29 Just very quickly. I was among those who opposed the Montrose Parkway when it was  
30 six, seven years ago; whatever it was. I thought it was a bad idea. I think not finishing it  
31 is a worse idea.

32  
33 Councilmember Floreen,  
34 Worse idea, yeah.

35  
36 Councilmember Berliner,  
37 So I'm not a big fan, but I think the notion of not concluding it is the worst of all worlds.  
38 So I will oppose the motion.

39  
40 President Knapp,  
41 Further discussion on the motion? Seeing none, all in support of the motion indicate by  
42 raising your hands; Council Vice President Andrews, myself, Councilmember Elrich.  
43 Those opposed; Councilmember Praisner, Councilmember Floreen, Councilmember



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1 Berliner, Councilmember Leventhal. Okay, 4 to 3, the motion is defeated. Do we have  
2 further discussion on any of the priorities?

3  
4 Councilmember Leventhal,  
5 I resonate very much with Mr. Elrich's comments, and when I first saw this I thought gee  
6 I wish we could put the transit list ahead of the road's list, which would have exactly  
7 zero effect but would, at least, show that we care a lot about transit. And I don't -- you  
8 know, if it's the sense of the Council to do that fine, if not, fine. You know, I as much as  
9 Mr. Elrich, as much as any member of this Council, would like to advance transit. We  
10 need it. We got to have it. We want to cars off the road. We want to get people on heavy  
11 rail, light rail, BRT, regular bus service. We want it, I agree. Amen. Let's do it. Let's do it  
12 with our money. Let's do it with State money. Let's do it with Federal money. Let's build  
13 transit. Let's build it at every opportunity. Let's build it everywhere we can.

14  
15 Glenn Orlin,  
16 Are you saying flip-flop the two T&E -- .

17  
18 Councilmember Leventhal,  
19 Circle 9, circle 9. Where it says our priority rankings for transit projects -- .

20  
21 Glenn Orlin,  
22 That would go at the bottom -- .

23  
24 Councilmember Leventhal,  
25 Put that first.

26  
27 Glenn Orlin,  
28 That would go on the bottom of circle 8, and the bottom of circle 8 would go to circle 9?

29  
30 Councilmember Leventhal,  
31 No, I would put in the top of circle 8.

32  
33 Glenn Orlin,  
34 Okay. Well then you will put both the D&E lists before the construction list?

35  
36 Councilmember Leventhal,  
37 Oh, you put -- I don't care. No I understand your point now. Yeah, sure do it at the  
38 bottom of circle 8.

39  
40 Glenn Orlin,  
41 Okay, so we'll flip-flop the two D&E lists, that's fine.

42  
43 Councilmember Floreen,  
44 That's fine, sure.



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1  
2 President Knapp,  
3 Okay, further discussion? See none, all in support of the priority -- whatever we're  
4 calling this -- State Transportation Project Priorities Letter, indicate by raising your hand;  
5 Councilmember Leventhal, Councilmember Berliner, Councilmember Praisner,  
6 Councilmember Floreen, and myself. Those opposed; Councilmember Andrews and  
7 Councilmember Elrich. The letter is agreed to -- whatever that adds up to -- 5 to 2.  
8 Thank you all very much for joining us. We are going to reconvene -- how many  
9 speakers do we have? Seven?  
10  
11 Unidentified,  
12 For which one?  
13  
14 President Knapp,  
15 1:45 -- 2:00. We're back here at 2:00.



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Council President Knapp,

Good afternoon, ladies and gentlemen. Public hearing on Zoning Text Amendment 08-12, Landscape Contractors - General Commercial (C-2) Zone which would allow landscape contractors a permitted use in the General Commercial Zone under certain circumstances. Persons wishing to submit additional material for the Council's consideration should do so before the close of business on July 17, 2008. A PHED Committee worksession is tentatively scheduled for July 21, 2008 at 9:30 a.m. Please call 240-777-7900 for information. Before beginning your presentation please state your name clearly for the record. I think we have one speaker. Hold on, we do, Greg Russ, speaking on behalf of Montgomery County Planning Board. He'll also be speaking to Agenda item number 5, or Agenda item number 7, so he gets, all right, enjoy it. Use all of it.

Greg Russ,

Thank you Council President Knapp. For the record, Greg Russ, for the Montgomery County Planning Board. The Planning Board reviewed Zoning Text Amendment number 08-12 at its meeting on July 10, 2008. The Board unanimously recommended approval of this Text Amendment. It is a narrow amendment that will extend the opportunity for landscape contractors to operate in the C-2 zone under limited circumstances, on sites with minimal potential for impact on residential development. As of our record there are approximately six C-2 zone sites that abut by railroad right-of-away and that are potentially eligible for use by landscape contractors under the terms of the proposed ZTA. The Board supports the approval of the ZTA as introduced. On the second item, item number 7, which relates to Zoning Text Amendment number 08-13, the Board reviewed this on July 10 as well. After careful review of the material, the Board, by a 2-2 vote, did not reach a majority recommendation on the Zoning Text Amendment. The ZTA would define a Transit Center and amend the purpose of the C-2 Zone to allow Transit Oriented Mixed Use development within 500 feet of a Transit Center. The Board carefully reviewed staff's recommendation that the ZTA be deferred for further consideration as part of the Zoning Ordinance rewrite. It was staff's view that the various mixed use options raised important issues. Each mixed use option was included to address individual development projects and the consequences have not been considered under any comprehensive approach. The Commissioners in support of the ZTA noted that they were not abandoning the Board's position against limited Zoning Text Amendments, but believe the mixed use concept for the site in question and for similarly situated sites have merit. Those who were not in favor of the ZTA believe that the ZTA leaves too many questions unresolved and were not in support of including another mixed use option in the C-2 Zone without an overall assessment of existing C-2 Zone mixed use options. There was an overall agreement by the Board that the need exists for a mixed use development option for sites located adjacent to transit areas and that amendments to address individual development projects are problematic. The Board would prefer that amendments to the Zoning Ordinance intended to resolve





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1 specific development issues be deferred pending completion of the Zoning Ordinance  
2 rewrite. Thank you.

3  
4 Council President Knapp,  
5 Very good. Thank you very much. Councilmember Elrich.

6  
7 Councilmember Elrich,  
8 When would the completion of the Zoning Ordinance rewrite be anticipated?

9  
10 Council President Knapp,  
11 The Chair of the Planning Board will come up and tell us right after we stop introducing  
12 ZTA's.

13  
14 Councilmember Elrich,  
15 Is there a chicken and egg thing there?

16  
17 Royce Hanson,  
18 That is an important consideration because every time there's a ZTA introduced it takes  
19 staff that otherwise could be working on a revision to deal with the ZTA. This is a  
20 chronic problem. We will have a progress report for the PHED Committee on this later  
21 this month.

22  
23 Council President Knapp,  
24 Two weeks, right?

25  
26 Royce Hanson,  
27 Two weeks, I believe.

28  
29 Council President Knapp,  
30 Yeah.

31  
32 Royce Hanson,  
33 And probably give you a better idea at that point as to where we are and basically, how  
34 long it takes depends on the kind of resources that we can put to bear on it.

35  
36 Council President Knapp,  
37 What kind of other strategies we can employ.

38  
39 Royce Hanson,  
40 Right. As you recall, we're using in house staff at the present time to deal with it  
41 because, given the budget crunch, we don't have consulting help now.

42  
43 Councilmember Elrich,



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1 But I mean, we have to think about this stuff in the context of these coming before us.  
2 And so, I mean, you will give me a better number in two weeks, but are we talking 6  
3 months, are we talking 2 years?

4  
5 Royce Hanson,

6 No, no, no. Well, for the whole thing, you're talking two to three years, which is a fast  
7 track for this sort of thing. Remember, we've got 117 zones including the ones that are  
8 obsolete. We have, right now, we're into the diagnostic work on it trying to sort out what  
9 the zones do, where there are overlaps, things of that nature.

10  
11 Council President Knapp,

12 We're going to have more significant update in two weeks and then we'll figure out what  
13 strategies we can employ to.

14  
15 Councilmember Elrich,

16 Well, I guess the question is, in context of the ZTA or any of the other ZTA's, I mean,  
17 what is the logical path? I mean, do you, I mean, I could listen to what you said and say  
18 that by implication, we shouldn't do anything for two to three years.

19  
20 Royce Hanson,

21 No I think that would be the wrong implication. What I think would be very helpful is that  
22 if the Council would establish, as it has with zoning applications, a couple times a year  
23 at which ZTA's could be filed, have Council staff, Executive staff, our staff review them  
24 at that point, do some triage, sort out the ones that really are important, that are well  
25 thought out, and need to go forward, notwithstanding the fact that we're in the process  
26 of a general comprehensive revision. I think that is a way that could conserve time and  
27 organize time far better, so it's certainly one of the recommendations that I think we'll be  
28 making to you.

29  
30 Council President Knapp,

31 The Chair and I are going to get together and discuss that further and figure out a way  
32 to bring that back to the Committee as potentially something to consider or some  
33 variation on that theme or some other alternatives.

34  
35 Councilmember Elrich,

36 I guess the variation that I would ask you to consider is, I mean, suppose something is  
37 not well thought out, but you could actually think it well out. I mean, I would, it seems to  
38 me that the process ought not to just simply be yes or no based on what's brought  
39 forward, but it may also provide an opportunity to say this is the way to go forward, if  
40 going forward is something people want to do. So I hope that we go beyond thumbs up,  
41 thumbs down, and actually get to, you know, constructive, what could work, in order to  
42 let things.

43  
44 Royce Hanson,



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1 I think we have to look at what's urgent, and what's important and be sure to make  
2 decisions on that basis. In some cases, something may be not yet well formed but may  
3 be so important it needs to go forward. But we need to make distinctions between those  
4 kinds of things, and, I can't, the zone I'm in doesn't quite fit what I would like to do.

5  
6 Councilmember Elrich,  
7 Okay.

8  
9 Council President Knapp,  
10 Councilmember Floreen.

11  
12 Councilmember Floreen,  
13 Well, I won't really repeat what I usually say on this subject, but just to say, if you're  
14 going to revisit this zoning, ZTA process, it's not just that. It is the whole ball of wax.  
15 These things are connected to master plans. Master plans are connected to the general  
16 plan. And unless we agree about how you change words, assumptions, expectations, I  
17 personally really don't see a way out of this box. You can come up with one, hooray, but  
18 it is a box we've created for ourselves because of our community's need for clarity and  
19 expectation and I really think it's a much bigger problem than just the ZTA process. And  
20 we have, I think, made it more difficult with some of the additional regulatory  
21 requirements that we have imposed, and community expectations that we will solve all  
22 problems in one document or another. That is the challenge, the expectation of  
23 specificity wherever you look to regulatory guidance instead of, you know, agreeing that  
24 you're stuck with the people you've elected or appointed to exercise discretion. Until we  
25 can work through that box, I really don't have a lot of optimism for this. But I will note,  
26 the Zoning Code rewrite has been on the books for way more than two years, long  
27 before any of us were born, probably, but at least six or eight, I believe.

28  
29 Royce Hanson,  
30 Present company excepted, of course.

31  
32 Councilmember Floreen,  
33 But much longer that, it's not a two year thing. I know it's been hoped to be addressed  
34 for a longer period of time. Always gets pushed off for all the usual reasons that we're  
35 all creating right here, it's the way it's going but it's been a long, long time.

36  
37 Council President Knapp,  
38 Councilmember Leventhal.

39  
40 Councilmember Leventhal,  
41 Well, I just want to point out, this is just an institutional struggle, and I just want to, you  
42 know, give a head's up to my colleagues as to which institution we're a part of. So, the  
43 Planning Board will always discourage Councilmembers from pursuing ZTA's and the  
44 Zoning Code is part of the County Code and we're lawmakers and we have the right to



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1 introduce, I'm not taking a position on these ZTA's yet, but you know, we have the right  
2 to introduce legislation. The Planning Board doesn't like it. It's a nuisance for them. It  
3 creates more work for them. That's just as an institutional relationship. The Planning  
4 Board will always tell us as a matter of high principal that it frowns on ZTA's, that should  
5 not, in and of itself, constrain our ability to exercise the rights that were given us by the  
6 voters of Montgomery County.

7  
8 Council President Knapp,  
9 Okay. Back to Mr. Elrich.

10  
11 Royce Hanson,  
12 We wouldn't think of stopping you.

13  
14 Council President Knapp,  
15 All right.

16  
17 Councilmember Elrich,  
18 I don't take the Planning Board's comments as trying to deny us our rights. I think the  
19 Planning Board brings a different perspective to it and the sector plans and master  
20 plans that they're trying to enforce come out of a long process which they are significant  
21 contributors to and basically the writers of at the end of the day. So I think there's a  
22 natural logic to them trying to see to it that whatever gets proposed for an area fit with  
23 the plans that they've worked largely on, and I've been concerned at times with some  
24 proposals that have come forward. And I will leave that stuff that's coming from the  
25 Council, but even things that have come from across the street that seem to focus on,  
26 I've got a piece of land, I've got a building, whoops, I don't need to consider the context  
27 that that building is going to go in on this piece of land. I think there needs to be more  
28 relationship between the two bodies. I guess my concern in this is, I mean, you've briefly  
29 said there's an alternate way, that maybe once or twice a year we could bring this  
30 forward. But until that's done, you're going to be seeing ZTA's. So short of saying it  
31 would be nice if they came in once or twice a year, isn't there a reaction to a ZTA that  
32 could be, I mean, would you have treated your reaction for example to this ZTA any  
33 differently had it been submitted on a designated date of September 1st as part of a  
34 package of, part of a group of ZTA's that are submitted? Would your consideration or  
35 would your staff's consideration been any different?

36  
37 Royce Hanson,  
38 That's a little hard to predict. I think it might well have been if there was, remember, on  
39 this particular one the Board divided 2-2. So whether we would have given it something  
40 different than a strong maybe, I can't tell you. But I do think that if we had a process for  
41 a more, of seeing a good number of them at one time that we might be able to pick out  
42 the ones that are most important. They're certainly an important objective in this one.  
43 The Board fully agreed on that. Probably more staff time could be spent working on the  
44 ones that are important or urgent in that they need to be done because they really can't



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1 wait for the revision than the vast number that we see that probably, I think it's probably  
2 fair to say, the world doesn't turn on them. If they could be, if at that time staff could  
3 suggest and Council is certainly free to do as it chooses on the matter, but suggest hold  
4 off on these 18 over here, and let's look at these 7 or 8, that really are important and  
5 need to get done right away.

6  
7 Councilmember Elrich,

8 I guess I'm trying to tease out of this whether the problem with this ZTA is the lack of a  
9 proper zone in which to put things and the desire to have a proper zone in place in  
10 which to put things versus the merits of were there a proper zone would this confirm  
11 with what you'd anticipate a proper zone to be? Because it's two different aspects of  
12 objection.

13  
14 Royce Hanson,

15 Yeah. I think that's a valid point. I think that, well, there are a lot of issues associated  
16 just with the C-2 Zone in itself, and whether it's the appropriate zone ultimately to have  
17 in places like these. That begs the question in part of whether given where we are, you  
18 need to do it now, and do it within the C-2 context and that's really where the Board was  
19 split.

20  
21 Councilmember Elrich,

22 I just want to say, you know, as I think about this, I'm trying to weigh like if I do nothing,  
23 and the fall back position is the easily permitted big box in the middle of that, I don't  
24 think a big box is a preferable outcome. If we just say don't do this one, so you go back  
25 and do what's easily permitted, if I get a legal preferable, if I get a legal and clean  
26 outcome that's not as good as a messy, and maybe better outcome.

27  
28 Royce Hanson,

29 That's the.

30  
31 Councilmember Elrich,

32 Is the more important principal to preserve here.

33  
34 Royce Hanson,

35 Right. That's the issue that you're.

36  
37 Council President Knapp,

38 Which we will have plenty of time to address in Committee.

39  
40 Councilmember Elrich,

41 Okay.

42  
43 Council President Knapp,



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1 Okay, this concludes this panel. Agenda item number 7, Zoning Text Amendment 08-  
2 13, Transit Oriented Mixed Use - General Commercial (C-2) Zone. We have three  
3 speakers. Jim Humphrey representing Montgomery County Civic Federation, Barbara  
4 Sears as an individual, and Bryant Fougler representing Fougler Pratt Development. Mr.  
5 Humphrey is our first speaker. Pardon? I don't have a fourth. Let's get started, we can  
6 figure it out.

7  
8 Jim Humphrey,

9 Thank you. My name is Jim Humphrey, I'm testifying on behalf of the Montgomery  
10 County Civic Federation as Chair of the Planning and Land Use Committee. The  
11 Federation's executive committee voted unanimously at their June meeting to  
12 recommend to Councilmembers that they not approve Zoning Text Amendment 08-13  
13 because of our opposition to master planning by ZTA. There are often unforeseen and  
14 undesirable consequences when a ZTA such as this is intended to allow a developer of  
15 a specific site to build something not currently permitted under the building standards of  
16 the zone in place. One, when the Council targets a new use or increased density for a  
17 specific property in a zone other sites must be included to avoid the equivalent or spot  
18 zoning little attention is paid these other sites, because the focus is on the site for which  
19 the altered standards are requested. But, you then provide an incentive for  
20 redevelopment of all of those properties due to the increase in profitability. In addition to  
21 the – site near Montgomery Mall, Planning staff calculated that as many as 248 C-2  
22 Zoned properties in 10 different areas of the County could be impacted by this ZTA,  
23 depending upon the definition of Transit Center. But the owners of those other  
24 properties and more importantly, the businesses that rent from those owners are not  
25 before you today weighing in on this ZTA, because they are not aware that legislation is  
26 being considered that can impact the ability of their businesses to survive. Even if  
27 businesses could afford the increased rent they would be charged in a redeveloped  
28 building on their current site, they may not be able to relocate and survive the  
29 construction period. So an unintended consequence of this ZTA is that it could result in  
30 a number of businesses in the County going out of business. Two, when a zone  
31 category is left in place on a property but the building standards of that zone are  
32 changed, it is the equivalent of rezoning without going through the master planning  
33 process. As a result, when a perspective purchaser who looking to buy property in an  
34 area is told of the master plan and given an opportunity to review it as required by law,  
35 the master plan will no longer accurately reflect the allowable building standards. For  
36 example, the master plan would still show a recommendation for a three-story  
37 commercial development for the block across from Montgomery Mall where Fougler  
38 Pratt is proposing their mixed use project, and only a careful examination of the Zoning  
39 Ordinance would show that different standards were applied to the C-2 area by a ZTA.  
40 Three, when the use allowed in a zone is changed by a ZTA no comprehensive analysis  
41 is done of adequacy of public facilities to accommodate that new use and all of the  
42 impacted planning areas as is done with rezoning through the master planning process  
43 is accomplished. For instance, what will the projected student generation rate be from  
44 this hybrid C-2 Zone and is there sufficient school capacity in the affected areas to



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1 handle that. Finally, the Council could be opening the door to a brand new lobbying  
2 effort by the development industry and their attorneys to change ride-on routing in order  
3 to create new Transit Centers or move the location of existing ones to benefit their  
4 properties, an added pressure that I'm sure you could all do without. We support the  
5 Planning staff in urging you to defer action on this ZTA and review it in context of the  
6 upcoming Zoning Ordinance rewrite project. These commercial zones will be the first  
7 zone categories attacked when the rewrite project goes forward. Thank you.

8  
9 Council President Knapp,  
10 Thank you. Ms. Sears.

11  
12 Barbara Sears,  
13 Yes. Good afternoon. My name is Barbara Sears with Linowes & Blocher. I represent  
14 Fougler Pratt and Mr. Fougler will give our comments.

15  
16 Brian Fougler,  
17 Good afternoon. My name is Brian Fougler. I'm a principal of Fougler Pratt Companies  
18 and as always, it's a real pleasure to be here. [laughter].

19  
20 Council President Knapp,  
21 Only a hint of sarcasm.

22  
23 Brian Fougler,  
24 No, no, no, no. I love it here.

25  
26 Councilmember Elrich,  
27 I need a drink.

28  
29 Brian Fougler,  
30 It's been too long. It's been far too long. For over 45 years, Fougler Pratt has been  
31 involved in the development of high quality projects, real estate projects in the  
32 Washington area, in Montgomery County, and in many parts of the country. We're very  
33 proud of our track record. We're very proud of the things that we've done here and we  
34 feel they've had a very positive impact on the communities in which we work. We do this  
35 and we've consistently done this by working very closely with governmental authorities  
36 and planning agencies and citizens and striving to develop projects that have innovative  
37 design, that really understand and respond to market needs and requirements, and by  
38 constructing and maintaining those buildings very well. Our mission statement reads we  
39 build people, relationships, businesses, buildings, and communities that are excellent  
40 and lasting and we work very hard every day to live up to those ideals. In urging the  
41 adoption of this Zoning Text Amendment, we hope to continue that tradition. The  
42 proposed action would amend the C-2 Zone that would allow a quality mixed use  
43 development in proximity to a Transit Center and fulfill a shared vision we have forged  
44 with local citizens. We believe the proposed ZTA is not a departure from the Zoning



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1 Ordinance, but rather a natural yet limited extension of its intent to promote mixed use  
2 development adjacent to transit facilities. Currently, the Zoning Ordinance allows mixed  
3 use development in a C-2 Zone for sites larger than one and a half acres within 1500  
4 feet of a Metro station in a CBD or within a Metro policy area. The proposed ZTA  
5 clarifies that a major Transit Center along with a Metro station justifies mixed use  
6 development. In working with County staff and with the citizens we've concluded that  
7 the C-2 land within 500 feet of such a Transit Center justifies such a mixed use  
8 development. In crafting this particular ZTA, we've collaborated and worked very closely  
9 with the Montgomery Mall Citizens Advisory Panel, MMCAP, an umbrella group that's  
10 comprised of Potomac, Chevy Chase, and Bethesda community groups that surround  
11 our site. We have a signed agreement with MMCAP ensuring that our plans will include  
12 lead rating of this building, quality architecture, quality public spaces, and a pleasing  
13 street edge. MMCAP sees this development as a template for future development of all  
14 the properties located just north of Montgomery Mall. We have found that MMCAP  
15 shares our vision for this neighborhood and this is because their community has been  
16 negatively impacted the by the prevailing C-2 zoning in their area. This zoning, which  
17 allows a 1.5 FAR for entirely commercial uses that results in big box development, low  
18 slung surface park monoliths that turn their back to the street. Our project, in contrast,  
19 the ZTA will enable us to develop a mixed use transit oriented, transit related  
20 development north of Montgomery Mall. We own this land jointly with the Orsman  
21 family. It's a 4-acre site. The Orsman Ford dealership is now closed. This ZTA will allow  
22 us to redevelop the site with quality architecture, environmental friendly design, market  
23 rate and MPDU homes, a mix of retail stores and restaurants that will not be found in  
24 the mall, below grade parking, and a beautiful highly designed landscape open space,  
25 with great signage, lighting, et cetera. This proposed ZTA will allow the inclusion of  
26 residential development adjacent to the Montgomery Mall Transit Center. The overall  
27 FAR would not exceed 2.5. The entire ground floor would all be retail. Despite this  
28 higher FAR, the trip generation studies that conducted for MMCAP showed that peak  
29 p.m. trips under this mixed use scheme, compared to what we could do, a typical big  
30 box 100% commercial project, is actually 33% lower. And this is a function of simply  
31 replacing retail density with residential density. It will allow us to produce 340 multifamily  
32 homes of which 43 will be MPDU's. These will be rental apartments built to  
33 condominium specifications and will include wonderful services and amenities.

34  
35 Council President Knapp,  
36 I'm going to have to ask you to.

37  
38 Brian Fougler,  
39 Go. Okay. Mr. Humphrey raised a point, and the concern was, what are the unintended  
40 consequences of all of this. We looked at this very extensively. There are two sites in C-  
41 2 Zones that would be affected by this. There's three. There's our site, there's one at  
42 White Oak, and we think that this kind of development would be appropriate at White  
43 Oak, the other is the Langley Park Transit Center, that's not located in Montgomery





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1 County. So the ZTA could be amended to protect us from that. The conversation that  
2 was held. Okay. Go ahead.

3  
4 Council President Knapp,  
5 Thank you.

6  
7 Pete Downs,  
8 Yes. My name is Pete Downs. I'm the President of MMCAP which is MMCAP.

9  
10 Council President Knapp,  
11 Three minutes.

12  
13 Pete Downs,  
14 Okay. Much of what I was going to say has already been said so I won't repeat it.  
15 Basically, Fougler Pratt came. I guess that's.

16  
17 Council President Knapp,  
18 In consideration of that, go ahead, I'm sorry, go ahead. All right.

19  
20 Pete Downs,  
21 Fougler Pratt came to us approximately a year ago to discuss the development that is  
22 being proposed. And MMCAP was developed actually several years ago in response to  
23 the expansion of Montgomery Mall. We are 12 communities that literally ring the  
24 Montgomery Mall area. This development that is being proposed is part of the Sullivan  
25 tract. So it becomes part of our purview, and our background. We are very much in  
26 favor of it for the following reasons. Number one, we did some extensive negotiations  
27 on things like the aesthetic, the streetscape, the sustainability of the facility, we also  
28 looked at the density, the height, we looked at the 1500 foot location from the bus  
29 terminal or from the Transit Center. And all of those things were amended, or we  
30 negotiated rather extensively. So, we also, one of the biggest reasons we're very, very  
31 positive towards this facility is the ability to offset the big box concept. We are already  
32 being impacted greatly by the Montgomery Mall expansion. We're losing a very nice  
33 neighborhood amenity, which is West Lake Crossing, which we feel is a very nice  
34 shopping area and we think that this is going to replace that on the first floor. So after all  
35 of these negotiations, we're very much in favor of this facility, because it adds very  
36 greatly to our neighborhood, and we're the ones that are going to be the ones most  
37 impacted by it. So we are very much in favor of it, and we hope that you approve it as  
38 soon as possible.

39  
40 Council President Knapp,  
41 Thank you very much. Councilmember Elrich.

42  
43 Councilmember Elrich,



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1 I guess I'd like staff to clarify that the issue of the 248 C-2 Zoned properties that's  
2 eluded to, that says Planning staff calculated as many as 248 C-2 Zoned properties in  
3 ten different areas of the County could be impacted.

4  
5 Jeff Zyontz,

6 I believe that's the total number of C-2 Zoned properties, and if you move a transit  
7 station to any one of them, then this zone would apply. But of course you have to have  
8 the criteria of the transit station met. So I don't think it's quite as extensive as the  
9 possibility of it going to all C-2 Zoned sites.

10  
11 Council President Knapp,

12 Roll that into the part of our discussion when the Committee takes that up.

13  
14 Councilmember Elrich,

15 Yeah, and I guess I would be interested in hearing from the Civic Fed, you know, is it  
16 something in writing about what you think the Council ought to specifically consider in  
17 terms of impact. I think the point is good because these ZTA's, the life of them is often  
18 exactly what you described here. You two negotiated with each other to get something  
19 you want, in order to avoid spot zoning, you write a ZTA that covers all the C-2 property  
20 next to a Transit Center in County, none of those other properties have had any  
21 negotiation with any property owner assuring that anybody else would get what you  
22 managed to get by negotiation.

23  
24 Brian Fougler,

25 We understand that. Like I said, our research indicates there are just two other sites in  
26 the County that would be affected and we think one, it's the right thing to do there.

27  
28 Councilmember Elrich,

29 So I think these are things we need, these are the discussions we need to have and so  
30 I'm interested in what the broader questions are we ought to be looking at.

31  
32 Jim Humphrey,

33 The statement was made, for instance that Langley Park wasn't included because all  
34 the C-2 property or commercial property there was in another County and that's not  
35 what the map in the Park and Planning staff packet shows.

36  
37 Councilmember Elrich,

38 One-fourth of it is in Montgomery County.

39  
40 Jim Humphrey,

41 It shows C-2, our C-2 properties that would be impacted within 500 feet of a Transit  
42 Center.

43  
44 Council President Knapp,



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1 Any information you have, Mr. Humphries, please share that.

2  
3 Jim Humphrey,  
4 The Planning staff report was incredibly useful.

5  
6 Council President Knapp,  
7 Okay. Councilmember Floreen.

8  
9 Councilmember Floreen,  
10 Thanks. Just a question, a request of staff, whenever we get to this in Committee. Could  
11 you ask Linda McMillan to talk about how this relates to the housing policy issues that  
12 are before the Planning Board now and the different quarter reports where they've been  
13 talking about housing as well? Thanks.

14  
15 Council President Knapp,  
16 Thank you very much. I see no further questions.

17  
18 Unidentified  
19 Thank you very much.

20  
21 Unidentified  
22 Thank you.

23  
24 Unidentified  
25 Thank you very much.

26  
27 Council President Knapp,  
28 Thank you. Agenda item 8. This is a public hearing on a Special appropriation to the  
29 Maryland National Capital Park and Planning Commission's FY09 Capital Budget and  
30 amendment to the FY09-14 Capital Improvements Program for \$1,589,000 for the Rock  
31 Creek Trail Pedestrian Bridge. Persons wishing to submit additional material for the  
32 Council's consideration should do so before the close of business on July 17, 2008. A  
33 PHED Committee worksession is tentatively scheduled for July 21, 2008 at 9:30 a.m.  
34 Please call 240-777-7900 for information. For beginning your presentation, please state  
35 your name clearly for the record. We have four speakers. The first is Mr. Hanson  
36 speaking on behalf of the County Planning Board, Arquilla Ridgell Mid County  
37 Recreation Advisory Board, Joe Fritsch as an individual, and Jean Arthur speaking on  
38 behalf of Montgomery County Roadrunners Club. Chairman Hanson, you are the first  
39 speaker and it says you are speaking on both this and the next item.

40  
41 Royce Hanson,  
42 Yes.

43  
44 Council President Knapp,



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1 Okay.

2  
3 Royce Hanson,  
4 Do you want me to hold off on the next item until that part starts?

5  
6 Council President Knapp,  
7 Go ahead. You can do them both at one time.

8  
9  
10 Very good. I'm Royce Hanson. I'm Chairman of the Montgomery County Planning  
11 Board. With regard to the Rock Creek Trail Bridge, this past year, or past May rather the  
12 Parks Department bid the Rock Creek Trail Bridge project for construction, which  
13 attributable to rapidly rising construction costs, we now know exceeds the costs we  
14 included in our CIP request. To fund the increase in costs this appropriation would add  
15 1.589 million in federal transportation enhancement funds secured through the state.  
16 With this addition Parks has successfully obtained a total of 3.957 million in federal  
17 transportation enhancement funds and we've also obtained 1.631 million in program  
18 open space funds, these are state open space funds rather than local space funds,  
19 making a total federal and state funded portion 5.588 million. The 2.763 million in  
20 County bond funds already approved by Council will go to make up the total of 8.351  
21 million for the project in a one-third, two-thirds state to County and federal funding ratio.  
22 The federal transportation enhancement program is specifically aimed at community  
23 projects designed to strengthen the intermodal transportation system and even a casual  
24 glance at the maps shows the importance of the Rock Creek Trail as a bike and  
25 pedestrian transportation route in addition to its role as a recreational amenity. At the  
26 time of ever rising gas costs, investment in bike access is all the more critical in safety  
27 among all transportation modes corresponding greater. Unfortunately, this opportunity  
28 for a choice of transportation modes is diminished owing to the lack of safe crossings at  
29 arterial roads jeopardizing safety for all users as well as continuity, which is vital to the  
30 bike transportation system. I really do want to emphasize the continuity aspect of  
31 building continuity in our bike system. The bridge solves some both safety and  
32 continuity problems. And the impetus for the bridge originated with the community and  
33 the County Council in response to safety concerns and accident statistics at this  
34 intersection between individual, or between pedestrians and vehicles or bicyclists. The  
35 Board urges the Council to approve the appropriation of the additional state funding  
36 allowing the expenditure of these funds in Montgomery County and for the Parks  
37 Department to be able to proceed to construct this project.

38  
39 Council President Knapp,  
40 Thank you very much. Did you want to speak on the second one?

41  
42 Royce Hanson,  
43 With regard to the Silver Spring Transit Center, the Planning Board urges you to  
44 increase the supplemental appropriation requested by the Executive by \$1,319,384 to



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1 include four essential design elements that were value engineered out of the project and  
2 excluded from the Executive's request. Three of these elements were among nine that  
3 were included in the Memorandum of Understanding executed by the Commission, the  
4 Executive, and WMATA in recognition of the Commission's release of its park easement  
5 at the Transit Center site and our agreement to accept less area in replacement open  
6 space. We're pleased that the two replacement open spaces at the Metro Plaza and the  
7 former Jug Handle, which will become the Gene Lynch Urban Park, will be integral parts  
8 of the Sarbain's Transit Center. We're disappointed to see the other elements excluded.  
9 They represent a small fraction of the total cost, but add great aesthetic and functional  
10 value to the project. The first of these will add only \$55,000 to the project's cost. It will  
11 allow pedestrian areas leading to Ramsey Avenue, including the central island, be  
12 constructed with a concrete base, a bond break, and concrete surface so that the top  
13 layer can be easily removed and replaced with Silver Spring standard streetscape when  
14 the private segment of the center is developed. Without this addition, the pedestrian  
15 friendliness and attractiveness of the center will be reduced and the County will build at  
16 a lower standard than we demand of the private sector. The second improvement costs  
17 only \$17,000. Would you let me finish this?

18  
19 Council President Knapp,  
20 Yes.

21  
22 Royce Hanson,  
23 Yeah. It would provide specially paved crosswalks across Wayne and Ramsey Avenues  
24 similar to the ones installed at Fenton and Ellsworth. These will significantly improve  
25 pedestrian safety and promote the County's commitment to pedestrian safety in the  
26 highest use and public visibility. The third element consists of two parts. A -- glass  
27 canopy at the plaza entrance to the Metro at a cost of \$445,000. And the use of the  
28 same material to fully enclose the escalators 1 and 2 and stairs 1 and 5 at a cost of  
29 \$332,384. The elimination of the canopy will diminish the experience of daily transit  
30 riders passing through the major gateway to Silver Spring, which is the second busiest  
31 Metro system in the entire system. It will provide shelter and illuminated at night, signify  
32 the portal to Silver Spring. The metal has been partially substituted for the full glass  
33 enclosures to the stairs and escalators which would add character to the station,  
34 distinguishing it from being merely a utilitarian bus garage. Together with the canopy,  
35 they're important place making features. We hadn't expected the fourth element, the  
36 transit store and police building to be eliminated from the plaza. It was not presented to  
37 the Board at mandatory referral as an item that was a candidate for value engineering.  
38 This distinctive glass building anchors the entrance plaza and provides a strong security  
39 and information resource. It's been moved to the back of the center on the second level  
40 and replaced by a planter. We think police and information are more useful at this  
41 location than potted plants. Moreover, this building provided an edge to the plaza,  
42 separating it from the lanes serving hundreds of buses entering and exit on Coleville  
43 Road. In conclusion, the Planning Board urges the Council to restore these design  
44 elements to make the center a more inviting and unique part of the travel experience of



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1 those using it. They add only 1.4% to the overall cost, but substantially improve the  
2 center's appearance, convenience, safety, and connections to the Silver Spring  
3 community.

4  
5 Council President Knapp,  
6 Thank you.

7  
8 Royce Hanson,  
9 Thank you.

10  
11 Council President Knapp,  
12 Ms. Ridgell.

13  
14 Arquilla Ridgell,  
15 Good afternoon. My name is Arquilla Ridgell and I'm here representing the Mid County  
16 Recreation Advisory Board in support of building the Rock Creek Trail Pedestrian  
17 Bridge. The Rock Creek Pedestrian Bridge can represent a community bond and safe  
18 connection for the pedestrians of Montgomery County. The majority of the bridge users  
19 will be County citizens, hikers, cyclists, and pedestrians. And I think that there will also  
20 be great benefits to the County, and it will increase the pedestrian use on the Rock  
21 Creek Trail. Currently, Viers Mill is a common turn around point for all types of trail  
22 users, due to the difficulty of the at grade crossing and the trail turning into a  
23 neighborhood sidewalk for a short distance. Large groups blatantly cross against the  
24 light while attempting to take advantage of the long trail, meaning they have to cross  
25 Viers Mill Road in order to continue on the trail. The bridge will increase the trail use,  
26 because of the safe crossing, which in turn means longer routes for commuters and  
27 recreation users. And also I think this will also have an impact on the future relationship  
28 with the Maryland State Government. This project is a joint effort between the Maryland  
29 State Government and the Montgomery County Government. If the Montgomery County  
30 Government backs out of the agreement, then this will send the Maryland State  
31 Government a negative message for relationships on future projects, joint projects  
32 which will lead to less amenities for citizens as the County will have to go it alone with  
33 more projects in the future. And also, I think it's a question of safety. The real question  
34 and test of whether or not to build the Rock Creek Pedestrian Bridge is simply a matter  
35 of safety. If the safety of all types of trail users is important to this Council, then build a  
36 bridge. If not, then don't build it. I hope that you will consider building it.

37  
38 Council President Knapp,  
39 Thank you.

40  
41 Arquilla Ridgell,  
42 Thank you.

43  
44 Council President Knapp,



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1 Mr. Fritsch.

2  
3 Joe Fritsch,

4 Hello. My name is Joe Fritsch. This is Alec and Aiden, by the way. As a regular trail  
5 user, I just wanted to give my input. One of the major problems with the intersection as  
6 it is, is that the at grade crossing, when you're crossing Veer's Mill in the crosswalk,  
7 there is a left turn lane off of Aspen Hill crossing at the exact same time. You've got, the  
8 crosswalk users have the light at the exact same time as the left turn users, bringing up  
9 a dangerous conflict issue. I've seen, personally on a bicycle, I get in the straight car  
10 lane, or the left turn straight car lane, since there does not continue on. I do not use the  
11 crosswalk, I find it too dangerous. And with the increase of cycling, we've seen the  
12 problems with the ICC with the number of cyclists and overall users on the ICC, is just  
13 increasing greatly which is bringing up some of the issues there. And part of the issue  
14 with the ICC problem, sorry, not the ICC, that was Thursday's meeting. Last night's  
15 meeting was the Capital Crescent Trail, Capital Crescent Trail and the crowdedness on  
16 the Capital Crescent Trail. Part of the problem is the Capital Crescent Trail is the only  
17 true three mile bicycle trail that we have where you have limited at grade crossings and  
18 being ten feet wide. This bridge would help to increase the users on it. This would help  
19 to increase the safety. This would spread out the users throughout the counter so  
20 people aren't getting in their cars and driving down to the Capital Crescent Trail, to ride  
21 there from the Gaithersburg and the upper mid County region. The other point I'd like to  
22 make, if money is taken from this project, and the project is canceled, the money that is  
23 taken from this project needs to go to other cycling projects, other multiuse trail projects.  
24 Thank you very much.

25  
26 Council President Knapp,

27 Thank you very much. Ms. Arthur.

28  
29 Councilmember Floreen,

30 Oh good.

31  
32 Jean Arthur,

33 I do have for the rest of you, I just know – and Ms. Floreen bikes, so I will give you some  
34 too. I'm representing Montgomery County Roadrunners Club. I'm a Board member. I  
35 was President from 2003 to 2006 and we are totally in support of this bridge over Viers  
36 Mill Road. From the first time we heard about it, I think around 2001 or so, we've been  
37 excited about it and we've been anxiously waiting to see work start. We consider the  
38 Rock Creek Park, the bike path, our second home. We do have physical space on  
39 South Lawn, but one of the attractions of that South Lawn space is how close it is to the  
40 trail, now we can just run down to the trail after a meeting and go for a run. We use all  
41 14 miles of that trail on a regular basis. It would be wonderful if we can cross Vi`ers Mill  
42 Road over the cars rather than with the cars. We totally support the project and we hope  
43 that you approve this funding. And by the way, for the future, we would also like to see  
44 an above grade crossing at Randolph Road. And the socks that I gave you are from the



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1 race that I direct, which is the Pike's Peak 10K which goes from Shady Grove Road  
2 down Rockville Pike to White Flint. It's the most wonderful thing to see 3,000 people  
3 running down Rockville Pike on a Sunday morning. Like I said, I am the race Director  
4 and I have socks that all of you can get, if you just let me know when I get up after my  
5 testimony I will hand you a pair.

6  
7 Council President Knapp,  
8 Very good. Thank you very much. Councilmember Leventhal.

9  
10 Councilmember Leventhal,  
11 Chairman Hanson, this is a good opportunity. I want to raise with you that I've heard that  
12 the restriction on nighttime access to Rock Creek Park is posing a problem for bicycle  
13 commuters. Particularly in certain times of the year when it gets dark very early, if we  
14 want to encourage people to use bicycle as their primary means of transportation to and  
15 from work, Rock Creek Trail could be a very useful commuting route, and obviously, we  
16 don't want people loitering in parks or doing inappropriate activities, but using the park  
17 for bicycle commuting, I wonder if there's a way we could encourage that.

18  
19 Royce Hanson,  
20 I'll look into that. I'll ask Parks Department to take a look at that.

21  
22 Councilmember Leventhal,  
23 Thank you.

24  
25 Royce Hanson,  
26 See if maybe we can expand hours or ultimately, there may be, we may need some  
27 lighting or something like that too.

28  
29 Councilmember Leventhal,  
30 Yeah. I mean, the commuters I've heard from have their own lights on their own  
31 bicycles.

32  
33 Royce Hanson,  
34 Yeah.

35  
36 Councilmember Leventhal,  
37 And they're happy to ride through the woods, but they're not allowed to.

38  
39 Council President Knapp,  
40 Very good. There are no more questions for this panel, thank you very much. Okay, our  
41 final panel for the afternoon is a public hearing on a Supplemental appropriation to the  
42 County Government's FY09 Capital Budget and amendment to the FY09-14 Capital  
43 Improvements Program for \$16,720,000 for the Silver Spring Transit Center. Persons  
44 wishing to submit additional material for the Council's consideration should do so before





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1 the close of business on July 17, 2008. A T&E Committee worksession is tentatively  
2 scheduled for July 21, 2008 at 2:30 p.m. Please call 240-777-7900 for information.  
3 Before beginning your presentation please state your name clearly for the record. And  
4 our second hearing for which each of these people is speaking to as well is a public  
5 hearing on a Supplemental appropriation to the County Government's FY09 Capital  
6 Budget and amendment to the FY09-14 Capital Improvements Program for \$2,500,000  
7 for the Silver Spring Civic Building. Action is scheduled at the conclusion of the hearing.  
8 And again, before beginning your presentation please state your name for the record.  
9 We have five panelists. Diane Schwartz Jones speaking on behalf of the County  
10 Executive, Cathy Stevens speaking on behalf of Silver Spring Citizen's Advisory Board,  
11 Jon Lourie speaking on behalf of Silver Spring Urban District Advisory Board, Jack  
12 Requa speaking as Washington Metro Area Transit Authority, and Jane Redicker  
13 speaking on behalf of the Greater Silver Spring Chamber of Commerce. Ms. Schwartz  
14 Jones, you are our first speaker.

15  
16 Diane Schwartz Jones,  
17 Thank you Mr. Knapp.

18  
19 Council President Knapp,  
20 Thank you.

21  
22 Diane Schwartz Jones,  
23 Good afternoon. President Knapp, members of the County Council. My name is Diane  
24 Schwartz Jones and I'm an Assistant Chief Administrative Officer in the County  
25 Executive's Office. Art Holmes, Director of the Department of Transportation, and I are  
26 here today speaking on behalf of the County Executive in support of the supplemental  
27 appropriation for the Silver Spring Transit Center and to explain the rationale for the  
28 specific items of work included or, in this case, not included in the proposed project. I  
29 appreciate the opportunity to speak with you today regarding the Silver Spring Transit  
30 Center project and the request for an additional \$16,720,000, which when appropriated  
31 will reflect a total project budget of \$91,374,000. The amount of our request reflects  
32 deferral or elimination of certain elements of design which results in a cost savings for  
33 the County of over \$3.5 million. In an optimal world where our projects did not need to  
34 compete against each other for limited funds, we would not have to make as many hard  
35 decisions about where to reduce costs. The reality is, that in addition to funding a  
36 multimodal Transit Center that meets our transit needs and creates transit oriented  
37 development opportunities, we must fund a multiple of capital projects, including road  
38 surface improvements, land acquisitions, construction of facilities such as libraries,  
39 recreation centers, and schools and so we made some hard cost reduction decisions for  
40 this very important project. We realize that it is unusual to be here along with our  
41 colleagues from WMATA and Park and Planning. Over the past year through a  
42 collaborative exchange of ideas with WMATA and Park and Planning, we recognized  
43 that the County would need to scrutinize the scope of the project for cost savings. Our  
44 project partners knew this and thus we agreed on an approach whereby we would



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1 present our request and both WMATA and Park and Planning would at that time use  
2 this opportunity to request additional funds for elements that they respectively want  
3 included in the project. In a perfect world, we would fund everything. Our MOU  
4 addressed the funding process. And so you see all of us now before you. We do not  
5 consider this disagreement to be adversarial nor do we consider the items of  
6 disagreement to be contentious. Rather, we recognize that each agency has its own  
7 challenges, objectives, and professional opinion on the value of various elements of the  
8 project. We will build the Transit Center in accordance with the funding decisions that  
9 you make. We have provided you with written testimony which provides much greater  
10 details about the project than what we can provide in three minutes. The County  
11 Executive feels strongly though that there are many additional competing CIP needs,  
12 including road services improvements as I mentioned, and land and other capital  
13 projects, which require County financial resources. Funding the additional \$3.5 million in  
14 architectural elements requested by Maryland National Capital Park and Planning  
15 Commission and WMATA would deplete the already minimal resources and result in  
16 foregoing other projects. With this, I would like to turn this over to Art Holmes who can  
17 describe the elements for you. And as you can see, we have boards in order or for you  
18 to see which elements are proposed for elimination.

19  
20 Arthur Holmes, Jr.,

21 Thank you Diane. Good afternoon President Knapp and members of the County  
22 Council. As Diane mentioned, we have identified various items for deletion in order to  
23 maintain a reasonable level of funding for this project. However, even with the  
24 recommended deletions we have developed a state of the art Transit Center for Silver  
25 Spring that will function well as a gateway to downtown Silver Spring and befitting the  
26 name the Paul Sarbain Transit Center. Let me first point out that of the ten items  
27 originally deemed important by Park and Planning and WMATA, we are including 5.5 of  
28 them in our contract. Only 4.5 of them are proposed for deletion. The items to be  
29 included in the construction of which there is no dispute include the streetscape along  
30 Coleville Road, installation of the Silver Spring type light fixtures, street light fixtures,  
31 shade tree requirements, canopies on middle and top levels, construction of canopies  
32 along glass roof panels, green roof over the south end of the facility.

33  
34 Council President Knapp,  
35 Quickly run through the rest of the list.

36  
37 Arthur Holmes, Jr.,

38 Okay. Let me just run through, and give you some idea. Breakaway concrete for future  
39 brick sidewalk, and he's putting up the cost of those items, staff asked for a crosswalk.

40  
41 Council President Knapp,  
42 We're not taking action on this item today. This will go. [laughter]. All right. Go ahead,  
43 quickly.



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1 Arthur Holmes, Jr.,  
2 A canopy at the entrance of the Metro Station, construction of stairs and an escalator  
3 enclosed using all glass panels.

4  
5 Councilmember Leventhal,  
6 Lovely Bruce Johnston.

7  
8 Arthur Holmes, Jr.,  
9 Instead we're constructing a mix of glass and metal panels. The additional escalator at  
10 the upper level in the south end of the facility, an additional stair outside of the interstate  
11 bus location, and location of the transit store in the transit plaza, and also all these items  
12 as Diane has indicated would come to a total of about \$3.4 million in additional costs.

13  
14 Council President Knapp,  
15 Okay. Thank you.

16  
17 Diane Schwartz Jones,  
18 To be clear though, the, I'm sorry, to be clear that the transit store will go into the back  
19 of the Transit Center.

20  
21 Council President Knapp,  
22 Okay.

23  
24 Diane Schwartz Jones,  
25 At the second level.

26  
27 Council President Knapp,  
28 I'm sure we'll have questions. Ms. Stevens.

29  
30 Cathy Stevens,  
31 Thank you Council President Knapp. I am a poor substitute today. Darien Unger, our  
32 Board Chair, his wife had a baby yesterday, so we apologize for the last minute  
33 substitution. I am representing the Silver Spring Citizen's Advisory Board. Our Board is  
34 requesting full funding for both the Silver Spring Civic Building and Veteran's Plaza  
35 project and the Silver Spring Transit Center. Our community in Silver Spring has been  
36 waiting many years for both projects and we look forward to the completion and their  
37 completion at the highest level of excellence that will reflect well on the County and  
38 serve the people of the community well in addition. We urge the Council to provide the  
39 additional 2.5 million for the Civic Building and Veteran's Plaza. Community members,  
40 as you know, have been very actively, and deeply interested and involved in this  
41 project, in the planning, the discussion, and shepherding the project through for many  
42 years, in painstaking processes, through compromise, budget cuts and value  
43 engineering and additional compromise as recently as last spring. The Civic Building  
44 and Veteran's Plaza will be the heart of Silver Spring. We've waited a long time to have



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1 this heart and we ask to just remind you that the community of Silver Spring lost its  
2 community meeting space when the armory was torn down years ago. And that was  
3 torn down in order to start the building of the retail space that now spans Ellsworth  
4 Drive. We urge you to approve this funding so that the project which is now very  
5 overdue can be started and built to its full expectations for all of the community  
6 members. The Paul Sarbain Silver Spring Transportation Center is also a key to our  
7 County success and our Silver Spring success. We need to facilitate public  
8 transportation in our region. A safe, inviting, and successful transportation center is  
9 necessary to this. The current Silver Spring Metro Station has been mentioned as one  
10 of the busiest in the system and we anticipate that the number of commuters will only  
11 grow for that and so we feel that the items that were value engineered out have gone  
12 beyond our preferences and beyond the needs of the community. We were again  
13 surprised and disappointed with the news from the County Executive that the  
14 construction bids were over by about \$18 million. And at this point, we urge full funding  
15 for this project, which means that we're asking for funding beyond what was requested  
16 by the County Executive. Over the last two years, the Planning Board and our Board  
17 have agreed on several design limits that we considered absolutely essential for the  
18 transportation center to be successful. Those elements include the key escalators,  
19 transparent walkways, escalator roofs, the canopy, and several other design features to  
20 maintain the transportation center as a walkable, light, and inviting area. No one wants  
21 us to look like the New York City Port Authority complex. We don't want to dissuade  
22 people from using this public transportation. The goals of the project are to encourage  
23 people using this. The County Executive has requested only the additional \$16.7 million  
24 for the project. We're asking for support beyond that, so that we can get what the  
25 community is due on that and have the transportation center built to its level of  
26 excellence. I thank you for your time today.

27  
28 Council President Knapp,  
29 Thank you. Mr. Lourie.

30  
31 Jon Lourie,  
32 Good afternoon. My name is Jon Lourie. As the Chair of the Silver Spring Urban District  
33 Advisory Committee I'm here to testify on its behalf. The Committee requests the  
34 County Council fund supplemental appropriation for two projects that are of critical  
35 importance to the Silver Spring community, the Silver Spring Civic Building and  
36 Veteran's Plaza and the Silver Spring Transit Center. The Silver Spring Civic Building  
37 and Veteran's Plaza is the last, but most important public piece of Fougler Pratt  
38 downtown Silver Spring redevelopment project. The Civic Building and Veteran's Plaza  
39 were proposed in the downtown Silver Spring project master plan as a replacement for  
40 the historic Silver Spring Armory and Coon Park. The project was endorsed by the  
41 Silver Spring Redevelopment Steering Committee in 1998, which envisioned the Civic  
42 Building and Veteran's Plaza as a cultural center that would draw the broadest  
43 spectrum of the community on a regular basis, provide a synergistic and street  
44 activating relationship with adjacent retail and restaurants, and become the new



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1 community heart and living room for downtown Silver Spring. The project also includes  
2 a veteran's memorial respecting the service and dedication of Silver Spring veterans.  
3 Initial proposals called for construction of the Civic Building and Veteran's Plaza to  
4 begin in 2002 with the facilities to open by 2003. More recently, once the A&E firm  
5 started work, the project schedule was updated for construction to begin in February of  
6 2006. Now after another two and a half years, the construction contract is ready to be  
7 signed and we can finally start construction. Unfortunately, the delays and the yearly  
8 escalation of construction costs have significantly affected the project costs leading to  
9 our current request for an additional \$2.5 million. I served on the Silver Spring  
10 Redevelopment Steering Committee as well as the subsequent Civic Building Steering  
11 Committee, which worked for years to develop a program for the Civic Building and  
12 Veteran's Plaza. I also served as a stakeholder member of the design group that met  
13 regularly with the architects during the design process. We pushed hard for the design  
14 of a quality project, while remaining aware of the limited resources available to execute  
15 the project. The project program requirements has not grown since its inception. In fact,  
16 it has been cut back over the years and extensively reviewed and value engineered for  
17 projected cost overruns. Further cuts would significantly reduce the functionality and  
18 quality of the facility and require further time for redesign and approvals. The private  
19 portions, the retail, restaurant, and movie theaters of downtown Silver Spring  
20 redevelopment project have been a resounding success, but without the community  
21 focus, Civic Building and Veteran's Plaza, the project is incomplete. We respectfully ask  
22 for your approval of the funding of the Civic Building so construction can start  
23 immediately. A second project requiring supplemental funding and equally important to  
24 the future of downtown Silver Spring is the proposed Silver Spring Transit Center. The  
25 Transit Center will provide a hub for our rail and bus transportation systems, greatly  
26 enhancing circulation and improving pedestrian access and safety. The present Silver  
27 Spring bus rail connection is chaotic, over utilized, and dangerous. Congestion along  
28 Wayne Avenue and the Coleville Road Jug Handle connection has conflicting bus to  
29 vehicular traffic flow as well as a treacherous and unsafe pedestrian environment. This  
30 situation has been exacerbated by recent down County growth and increased volume of  
31 buses accessing the site. The facility does not meet current needs and will not come  
32 close to meeting the needs of the future residents and employees of Silver Spring. The  
33 new Silver Spring Transit Center project will nearly double the capacity of bus service  
34 and provide an important link for intra-city bus service. It would also provide connections  
35 to regional bike ways such as the Metropolitan Branch Trail and the Capital Crescent  
36 Trail and accommodate the future connection to the Purple Line. The Transit Center will  
37 provide capacity and access improvements to pedestrian and bus circulation that will  
38 meet down County transportation needs for many years to come. The Silver Spring  
39 Urban District Advisory Committee asks that you approve the County Executive's \$16.7  
40 million request for additional funding for the Transit Center. The Silver Spring Urban  
41 District Advisory Committee will be meeting this Thursday and will further review the  
42 Transit Center and the construction items that have been value engineered from the  
43 project. We will submit a letter to you with our review comments.  
44



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1 Council President Knapp,  
2 Thank you.

3  
4 Jon Lourie,  
5 The Silver Spring Urban District Advisory Committee asks that you approve the  
6 additional funding for both of these critical Silver Spring projects. We appreciate your  
7 continued support.

8  
9 Council President Knapp,  
10 Thank you very much. Mr. Requa.

11  
12 Jack Requa,  
13 President Knapp, members of the Council, thank you for this opportunity to testify today.  
14 For the record, my name is Jack Requa and I'm the Assistant General Manager for  
15 Operation Services for Metro. I'm here to urge your support for the proposed  
16 supplemental appropriate and to urge your consideration of funding of an escalator  
17 between the second and third levels of the Paul S. Sarbain Silver Spring Transit Center.  
18 Metro has been working with the County on this project for more than nine years, and  
19 we're extremely pleased that after these many years of collective effort we're about to  
20 see this project come to fruition. This multimodal Transit Center will serve as a nexus for  
21 a wide variety of transit users including MTA commuter bus, Marks Brunswick Line, the  
22 University of Maryland Shuttle, Silver Spring Intra-City Van Go, Metro rails, Red Line,  
23 and numerous Metro bus and ride-on routes. The center is also being designed to  
24 accommodate the future Purple Line as well as bike and pedestrian users from the  
25 Capital Crescent Trail and the Metropolitan Branch Trail. That many transit uses  
26 converging in one area, it is not an exaggeration to expect that this Transit Center will  
27 become a model that transit agencies -- will try to emulate. Metro is fully aware during  
28 these tight fiscal times that every dollar spent by governments must be fully justified.  
29 The effort to value engineer this project has been methodical and focused. I do want to  
30 draw your attention to one element, an escalator connecting the second and third levels  
31 that Metro strongly recommends be added back into the project. In terms of the budget,  
32 the estimated cost of the escalator is \$1.238 million. The current plan has removed this  
33 escalator, but has left an open space on the third level to accommodate the escalator in  
34 the future. That is a viable option. However, Metro estimates that deferring this to  
35 become a standalone future project would increase the cost to 1.6 to 1.7 million without  
36 accounting for any inflation. To help explain the need for this escalator, consider a  
37 patron arriving in a bus from Coleville Road at the south end of the Transit Center, and  
38 whose destination is either south Silver Spring or the kiss and ride taxi facilities on the  
39 third level. Their options are to take one elevator at that end of the Transit Center.  
40 Second option would be, walk up two flights of stairs representing a 47 foot elevation  
41 change, walk to the north end where there are two additional elevators, or take the  
42 escalator to the second level and then walk to the stairs or elevator to the third level.  
43 Having the ability to take an escalator all the way up is a choice one would have at most  
44 stations in the Metro system. It is qualitatively the most comfortable choice for most



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1 people, and may be faster than waiting for and taking an elevator. Additionally, direct  
2 access from south Silver Spring to station entrance is enhanced with a continuous  
3 cascading travel plan on escalators. There are also quantitative reasons for funding the  
4 escalator. Today, demand for access to the Transit Center from the south is not nearly  
5 as high as the demand from the north. However, we are aware that the Planning Board  
6 has raised the height limit south of the station to 200 feet, and that the first of the new  
7 buildings is making its way through the approval process. We estimate that the three  
8 elevators will be able to handle less than one-third of the projected peak hour demand  
9 meaning that at a peak hour nearly 1,000 people will be relying on the stairs, at least in  
10 part, for vertical transportation. This is well within the capacity of the stairs, but the full  
11 elevation change is greater than we would normally expect for those going up stairs.  
12 Therefore, in addition to approving the supplemental request before you today, I also  
13 encourage you to add the necessary funds to restore this escalator to the Transit Center  
14 project. Thank you again for your continued support of Metro, and for this opportunity to  
15 testify.

16  
17 Council President Knapp,  
18 Thank you very much. Ms. Redicker.

19  
20 Jane Redicker,  
21 President Knapp and members of the Council, good afternoon. My name is Jane  
22 Redicker and I'm President of the Greater Silver Spring Chamber of Commerce, a  
23 membership organization representing almost 400 businesses, small and large, which  
24 together form the backbone of the economic renaissance in Silver Spring. On behalf of  
25 the Chamber, I'm here today in support of two measures. One, the supplemental  
26 appropriation of \$2.5 million for the Silver Spring Civic Building, and two, a  
27 supplemental appropriation of \$16.7 million for the Silver Spring Transit Center project.  
28 These appropriations, which we understand would be funded through GO Bonds and  
29 land sale proceeds will provide the funds needed to go forward with construction of  
30 these two very important projects for Silver Spring. First, the Civic Building in Veteran's  
31 Plaza. This project is vital to the heart and soul of the revitalization and is the last piece  
32 of redevelopment of downtown Silver Spring. Completion of the Civic Center will fulfill  
33 the County's promise to replace the armory and Coon Park, both among the first victims  
34 of demolition to make way for redevelopment. The Civic Building and Plaza will be used  
35 by not only community groups but also by businesses in downtown Silver Spring for  
36 conferences, training, and business shows. This facility must be built with the highest  
37 quality materials originally specified to ensure that it fulfills its goals as the landmark  
38 anchoring the downtown area. Unfortunately, the project has been delayed in part due  
39 to the optional method development process through Park and Planning, further, the  
40 cost of steel, copper, oil, and concrete, all significant components of construction have  
41 continued to escalate during the past year. These combination of delays and commodity  
42 cost increases have resulted in the need to request an increase in the appropriations to  
43 move forward. Second, the Silver Spring Transit Center. Chamber has long supported  
44 the redevelopment of a regional Transit Center in downtown Silver Spring. The Silver



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1 Spring Metro is one of the most heavily used in the Washington area and current Transit  
2 Center has the highest bus volume in the system. Completion of this project sets the  
3 stage for numerous smart growth opportunities in Silver Spring and is even more  
4 important as fuel prices continue to rise and more people rely on public transit. The  
5 Chamber understands that this request for supplemental appropriations is not  
6 unexpected, Late last year it was estimated that the cost for the Transit Center would  
7 exceed the funding available by 15 to 20 million and a decision was made to move  
8 forward and obtain actual costs instead of using estimated numbers. Further, as we said  
9 with the Civic Building, the increases in the costs of steel, copper, oil, and concrete  
10 have added to that cost. At the same time, the value engineering that has been done by  
11 the County has reduced the potential overall cost. Taken together, these factors still  
12 result in the need for a supplemental appropriation to move it forward. In conclusion,  
13 Silver Spring has waited a long time for both of these projects. It's time to put the  
14 shovels in the ground and get moving on the Silver Spring Civic Center and the Silver  
15 Spring Transit Center. We urge you to approve the County Executive's requests for both  
16 of these supplemental appropriations and we thank you for your time.

17  
18 Councilmember Andrews,  
19 Okay. Thank you very much. We do have a few questions or comments.  
20 Councilmember Floreen.

21  
22 Councilmember Floreen,  
23 Thank you. Glenn, we're going to take this up next week?

24  
25 Glenn Orlin,  
26 Monday.

27  
28 Councilmember Floreen,  
29 Yeah. Before then, if you could put your head together with Park and Planning and  
30 anyone else and see if for the Transit Center, whether some of these issues could be  
31 funded through developer contributions at a later date, or is there is a way address this?  
32 We actually did take that up with the entrance to the Silver Spring Metro on another  
33 environment, I forget now, a couple years ago, we said could this be funded through?

34  
35 Glenn Orlin,  
36 I understand it's like a \$360,000 bond that the Park and Planning has to be able to use  
37 for the project in Silver Spring, which I think has not been allocated yet, is that right  
38 Chairman Hanson? There was a \$360,000 bond for.

39  
40 Royce Hanson,  
41 Has restricted use.

42  
43 Councilmember Floreen,  
44 Maybe we'll re-restrict it. But if you could look at what other options might be available.





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Glenn Orlin,  
Okay.

Councilmember Floreen,

To add at least the things that are shown here in pink. I have to say, it's rare that you get to see the products of your decision, but just at Strathmore, seeing where they value engineered the escalator out of that facility, just brings home to me the need to try to do this right the first time. For these things, if we can look at what pieces of this could be perhaps put in a category for some other funding, developer funding, or whatever through the development, the regulatory process that would help.

Glenn Orlin,  
Okay.

Councilmember Floreen,  
Thanks.

Councilmember Andrews,  
Okay. Thank you. Councilmember Leventhal.

Councilmember Leventhal,

This has been very educational. I want to thank the participants from Silver Spring. We've heard a lot about this disagreement between the Executive Branch and Park and Planning. In fact, there was a front page article in the Gazette about it. I'm looking at these two side by side depictions and I had to really, and I have now, listened very carefully and kind of squint to see that there was a striking difference between the drawing on the left side and the drawing on the right side and yet there's been rhetoric in the press, and even here this afternoon from Park and Planning suggesting that if you didn't do the items that Park and Planning were asking for, the project would be ugly and that I guess this project on the left side is what is considered ugly by Park and Planning. And yet, really, as I'm looking at it here, now I realize this is at, from some distance and I'm not standing right up front and I can't, I don't have the benefit of actually seeing the canopy at the Metro Station, for example, but if these little design elements are the difference between, you know, ugly and beautiful, I guess, you know, beauty is in the eye of the beholder, but I think perhaps the rhetoric has overtaken the reality here. I think the Executive Branch, and I would probably be among those who would beat up the Executive Branch if the cost overruns were higher so, you know, there does come a time where we asked government to identify savings. Here, government has identified savings, and I guess in the interest of design excellence, Park and Planning is here to say that the philistines of the Executive Branch just don't appreciate true beauty but again, if we could put those side by side, the difference is not that stark to my eye. Now, I'm not trained in architecture or in planning but maybe we could tone down the rhetoric and not sling around words like ugly and try and work



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1 together as institutions of government rather than being as oppositional as this project  
2 has been. Anyone who wants to comment on that is welcome to do so.

3  
4 Councilmember Andrews,  
5 No comments. I'll take their silence as they appreciate architectural beauty. Okay.

6  
7 Councilmember Trachtenberg,  
8 And savings.

9  
10 Councilmember Andrews,  
11 Right, okay, Councilmember Elrich then Councilmember Ervin.

12  
13 Councilmember Elrich,  
14 I'm not sure that as George has said, the – quite as dire though I do see virtue in  
15 including some of the things, particularly the store at the bottom in the Transit Center.  
16 I'm interested in either finding some money one way or the other to restore some of the  
17 elements to this project that were taken out. I don't think anybody should beat up  
18 anybody for the cost escalations. I mean, the Executive doesn't have much to do with  
19 the changing, you know, price of all the factors that go into this and, you know, we  
20 complain as we do about all the other prices that have come in higher. I mean, we don't  
21 seem to have much control over that which the private sector dictates. The numbers are  
22 what they are. I'm not happy but those are the numbers we're dealing with. One of my  
23 questions is, does anything that's been done here impact on the connection of the three  
24 trails, the Green Trail, the Metropolitan Branch Trail, and the Capital Crescent Trail?  
25 These are all going to connect nicely together?

26  
27 Bruce Johnston,  
28 Yes, all of the trails will connect along and between the Transit Center in a rail line. And  
29 the Silver Spring Green Trail will connect along [ inaudible ] the elements that are in  
30 dispute here will have any impact on this.

31  
32 Councilmember Elrich,  
33 So all of that will stay intact then?

34  
35 Bruce Johnston,  
36 Right.

37  
38 Councilmember Elrich,  
39 Okay. I hope you can work this out in committee and find some funding for it.

40  
41 Councilmember Andrews,  
42 Okay. Thank you. Councilmember Ervin.

43  
44 Councilmember Ervin,



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1 Thank you very much, and thank you all for your testimony. I have a couple of  
2 questions. One is, first of all, I don't have the benefit Royce of your written testimony,  
3 but I listened carefully as you were giving your testimony, and I have two quotes and I  
4 want you to respond to them. One is the County will build at a lower standard than we  
5 expect of the private sector, that really stuck out in my mind, and that you believe that  
6 we need to restore these vital elements. I'm listening carefully as my colleagues and I  
7 are paying close attention and I want to ask you what the vital elements are and if you  
8 could speak to these standards. Because I think we've had this conversation too as it  
9 relates to the library.

10  
11 Royce Hanson,

12 Yes. I think it's a little different conversation as it relates to the library. I think we passed  
13 out to you a summary of the elements that were included as an appendix to the  
14 Memorandum of Agreement between, or Memorandum of Understanding between us,  
15 the Executive Branch, and WMATA. As Art mentioned, as Mr. Holmes had mentioned,  
16 five and a half of the nine elements were included in the project, and we're very pleased  
17 about that. The ones that were not included, one of which doesn't really show up in  
18 design at this point, but it's important later on, and that is to have a bond seal between  
19 the top layer of concrete and the bottom layer of concrete in the pedestrian areas on the  
20 top level that connect Ramsey. That's so that those can, so that that top level can be  
21 removed when the private development occurs and the streetscape, the standard Silver  
22 Spring streetscape can be included. This would be one of the elements that we would  
23 ordinarily just require of a private element building something in Silver Spring. The  
24 Silver Spring streetscape is one of the must do items. Here, there was a good reason  
25 for not doing it at this time because there may be some different kinds of treatment to  
26 that area that will occur once private development on the remainder of the site  
27 transpires. So making it easy to take up that top layer and then replace it, rather than to  
28 do it now, and then have to go in and take it up the hard way later on to make some of  
29 the changes that may involve some additional landscaping or things like that would  
30 make some sense. The difference between using the fritted glass and a combination of  
31 glass and metal is primarily an aesthetic element, which is important both daytime in  
32 terms of the way things look, and especially at night, because this can be lighted, and  
33 provides a much more inviting aspect to the system. Similarly, the canopy over the  
34 entrance may not look like a great big deal, but we felt that it is significant in terms of the  
35 convenience and attractiveness of the area. It provides some shelter. It also, again, is  
36 lighted at night, and can help with people understanding where the entrance to the  
37 Metro is and provide a more inviting aspect. The transit store and police station is an  
38 element that we really didn't include in our essential elements because we had thought  
39 it was a given. Its removal I think though has a couple of effects that are important.  
40 While the planter that would replace it would provide some seating area on the plaza, it  
41 nonetheless does not provide any barrier between the plaza and the buses entering and  
42 exit off of Coleville and a large number of buses are going to come through there. I think  
43 the peak hours estimated isn't it about 135 each way. About 100. Yeah. Somewhere in  
44 that range. So it's going to be a busy area and having some barrier there is important.



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1 The other thing that is important is that the station there would provide an opportunity  
2 for electronic signing information that would be available to passengers arriving or  
3 departing through the area. Plus a place for the transit police to be stationed, providing  
4 information, providing a sense of security to the area. There's some debate as to  
5 whether or not police presence makes people feel safe or not, I guess it's our judgment  
6 that it probably lends to a feeling of security in the area. So those are reasons why we  
7 had included those matters, and while we think they're important to provide the kind of  
8 amenity that we would expect to the private sector if this were being privately  
9 developed.

10  
11 Councilmember Ervin,

12 No, I appreciate that. That was really important. My other question has to do with the  
13 Purple Line, and where is the proposed entrance, if there is going to be a Purple, how  
14 does that play into the plan here?

15  
16 Bruce Johnston,

17 I'm Bruce Johnston with DOT, Department of Transportation. Purple Line alignment  
18 right now is kind of in flux and I don't know that there's any recognized or established  
19 entrance into it, but we have maintained a swath of area where the Purple Line passed  
20 through here, and that basically would pass over what's called the Metro Plaza entrance  
21 and over the bicycle trail which is going up in elevation over here in between this  
22 existing tower and the Transit Center and continue on. So, we've just provided for a  
23 swath of an area for the Purple Line to go through. We've been working with Diane  
24 Ratcliff of the Maryland Transit Administration, she's one of our partners in securing that  
25 area for the Purple Line and they're comfortable with the area that we've left aside.  
26 Would it be possible to address a couple of the other comments Mr. Hanson?

27  
28 Councilmember Ervin,

29 Sure, I.

30  
31 Bruce Johnston,

32 And if I can, I will show you on the slide, the area of, is this on? Is that better? Is that  
33 better? Okay. The bond break concrete that is proposed is basically on the top level in  
34 the pedestrian areas around the top level and in the island in the middle of the kiss and  
35 ride area and the taxi area. The reason that we're proposing concrete is basically for  
36 maintenance purposes and to provide a better walkable surface. We have gotten  
37 feedback from, I'm not sure, the disabilities group that brick pavers are much more  
38 difficult to traverse for the mobility impaired and also for maintenance. Concrete and  
39 WMATA will be maintaining this Transit Center after we build it, concrete is much easier  
40 to maintain. Now the idea is that this concrete, instead of building it in one pour, as Mr.  
41 Hanson mentioned, it would be poured in two pours with a bond break. The top level  
42 could be jack hammered way by the developer of the transit oriented development and  
43 brick pavers could be installed. If that happens, WMATA will no longer be on the hook to  
44 maintain it and it will probably be maintained by the County actually through the Silver



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1 Spring Urban District through an agreement with Park and Planning. It gets to be very  
2 convoluted and the cost of that maintenance then is a long term issue. So it's not just  
3 the \$17,000, the little red tag I put up here, to change it from one pour of concrete to  
4 two. It's the long term maintenance that we have a difficulty with, and the disability  
5 aspects of it. With respect to a couple of the other things, the glass enclosures, this  
6 plan, item 2A, shows the mix of glass and metal. The metal edge is only around the  
7 edge, I mean, for the most part, these enclosures, I'm guessing are probably 95% glass  
8 and they have a little bit of metal edge at the corners there. And if you look closely, you  
9 can see the difference. I know you can't from there, but that's with the all glass. It's a  
10 subtle difference, in some respects a distinction without much of a difference. I'm not  
11 sure about a number of the other things. The transit store, we had proposed to be  
12 relocated from the area in this location, and it would be located back at this location.  
13 One of our concerns is that we don't really want the police to be sitting in their office.  
14 That would be a more visible area. But we don't want them to be sitting in their office.  
15 We want them to be out walking around. So, we don't see a real benefit for having the  
16 police station right out there in the front. Their offices if they need to report something  
17 could be in the back. It's more of a product area. The canopy again, let me see where  
18 the canopy is, this is a picture of the canopy, about 400 and some thousand dollars for  
19 the canopy. We just felt for the physical benefit that that provides, there is an aesthetic  
20 benefit we agree, but for the practical benefit that it provides in terms of weather  
21 protection for anybody in that Metro Plaza, when they can simply duck inside the station  
22 to get out of the weather, we thought it was worthwhile not to include it.

23  
24 Councilmember Ervin,  
25 I want to follow up one thing Bruce while you're up there. What about the electronic  
26 signing, which I thought the Chairman raised a really good point.

27  
28 Bruce Johnston,  
29 Excellent idea.

30  
31 Councilmember Ervin,  
32 Yes.

33  
34 Bruce Johnston,  
35 We have included in this project, and in fact, there is a sister project for intelligent  
36 transportation software, but we've included in this project the conduits, the connectivity  
37 for intelligent transportation signage at every bus stop that will be, I mean, we're putting  
38 the conduit and the infrastructure in this other project and there has to be some  
39 correction of the language connections between the WMATA language and the ride-on  
40 language and the MTA language. They don't quite all speak to each other yet, but that  
41 future project will provide that intelligent information to all of the transit users at every  
42 one of the bus stops.

43  
44 Councilmember Ervin,



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1 What is the price tag again on the overhang, the canopy?

2  
3 Royce Hanson,  
4 About 445.

5  
6 Bruce Johnston,  
7 445,000 plus.

8  
9 Royce Hanson,  
10 445,000.

11  
12 Bruce Johnston,  
13 Plus a contingency.

14  
15 Councilmember Ervin,  
16 I don't know.

17  
18 Glenn Orlin,  
19 Would the Purple Line cover it?

20  
21 Councilmember Elrich,  
22 Purple Line goes through, doesn't that wind up, not only covering that, but probably  
23 having a bad impact on the trees?

24  
25 Bruce Johnston,  
26 The Purple Line, in our, I guess in my vision of it, what I understand so far, would be  
27 elevated over this area with probably somewhere in this area, a big column which would  
28 hold it up, and those would be strategically located along here but yes, it would be an  
29 elevated structure over it. How wide it is, I don't know.

30  
31 Councilmember Elrich,  
32 So, does that obviate the need for the canopy?

33  
34 Councilmember Andrews,  
35 All right. Yeah, Marc, hang on a second. I want to come back to Councilmember Ervin  
36 who still has the floor.

37  
38 Councilmember Ervin,  
39 Done.

40  
41 Councilmember Andrews,  
42 You're done? Okay. All right. Go ahead then Councilmember Floreen then  
43 Councilmember Leventhal.



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1 Councilmember Floreen,

2 Well, I just ask when we get into committee, we understand exactly how this works with  
3 the Purple Line. I guess we haven't been briefed on the details of the project recently.  
4 So, as we understand the interrelationship between the engineering elements of this  
5 project and how we expect that they'll fit in with the Purple Line, and so we can make  
6 the right recommendations on these elements. We realize, we're seeing a visual here. I  
7 am, I think for one, understand what we're funding in this picture, what is assumed to  
8 come later, and what we're not. It might be more helpful to do in Committee.

9  
10 Bruce Johnston

11 And if you like, I request ask Diane Repp or somebody from the Purple Line if they can  
12 be there Monday.

13  
14 Councilmember Ervin

15 It would be helpful, well just to understand what we're assuming because that overhang  
16 issue, the tree issue, the open space issue, may or may not, you know, we just need to  
17 understand what it is, how it's going to work.

18  
19 Councilmember Andrews,

20 Okay, Councilmember Leventhal. Yeah, I agree, if we could even get a diagram. I  
21 mean, we're describing things, if we could see them visually, the point of all is to try and  
22 help us understand it visually and then with respect to the Purple Line, then we can  
23 discuss this in Committee, is that ugly or is that beautiful. I mean, I'm kind of, really, I'm  
24 serious here. I mean, a lot of the debate on my friends from the Silver Spring Citizen's  
25 Advisory Board and I really appreciate their input and their being very thorough in giving  
26 us recommendations, but I feel like they've been sold on this vision that somehow the  
27 County is proposing something ugly and nobody wants anything ugly, of course, for  
28 downtown Silver Spring. But, you know, if Park and Planning is going to lay down edicts  
29 about what constitutes beauty we'd need to know how the Purple Line fits in an  
30 aesthetic vision as well.

31  
32 Royce Hanson,

33 We'll try to get that for you as to how it fits in.

34  
35 Councilmember Andrews,

36 Okay.

37  
38 Councilmember Leventhal,

39 I would actually, I would even tolerate a little bit of ugliness, if we could get the Purple  
40 Line. But if we could get a beautiful Purple Line, that would be even better.

41  
42 Royce Hanson,

43 It won't affect the Purple.



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1 Councilmember Andrews,  
2 Councilmember Trachtenberg says you can't go wrong with the Purple. Okay. All right.  
3 Thank you all very much. I think that's it for the questions. We have Action scheduled on  
4 item 10 which is a Supplemental appropriation to the County Government's FY09  
5 Capital Budget and amendment to the FY09-14 Capital Improvements Program of  
6 \$2,500,000 for the Silver Spring Civic Building. The PHED Committee is unanimously  
7 recommending that the expenditure schedule for the Silver Spring Civic Building project  
8 be revised. We have a portion of construction funding from FY09 to FY10 since  
9 construction has not begun and therefore will not be complete in FY09 and the  
10 Committee recommends approval of the \$2.5 million supplemental appropriation based  
11 on revised PDF and pending the outcome of the July 15 public hearing which we've  
12 had, so all those in favor of the Committee recommendation.

13  
14 Glenn Orlin,  
15 Mr. Andrews?

16  
17 Councilmember Andrews,  
18 Yes.

19  
20 Glenn Orlin,  
21 Let me just point out, there is an addendum in today's packet.

22  
23 Councilmember Andrews,  
24 Okay.

25  
26 Glenn Orlin,  
27 Which has the revised PDF, based on the feedback from the Executive Branch that was  
28 asked by the Committee, how much of the work could be done, in FY09 could be moved  
29 to FY10. Their answer was \$805,000. And so what you'd be approving, if you agree with  
30 that, would be the supplemental appropriation for \$2.5 million, but the PDF that's on,  
31 what I call circle 6 on the back part of the addendum.

32  
33 Councilmember Andrews,  
34 Okay. Very good. Thank you for that addition.

35  
36 Glenn Orlin,  
37 Sure.

38  
39 Councilmember Andrews,  
40 Yes, well the motion is before us. It's recommended, it's a Committee recommendation.

41  
42 Glenn Orlin,  
43 Right.





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1 Councilmember Andrews,  
2 So we need six votes. All those in favor of the Committee recommendation, raise your  
3 hand. That is everybody present. I will run down the list, that's all six, do we have six?  
4 Okay. All right, and there's Councilmember Elrich as well. That's seven. Okay. So 7-0.  
5 We now will move on directly, okay, to a Briefing on the WMATA Bus Priority Corridor  
6 Plan. Dr. Glenn Orlin is going to lead us through this I believe.

7  
8 Glenn Orlin,  
9 Well, I'm just going to introduce the folks.

10  
11 Councilmember Andrews,  
12 All right. Very good.

13  
14 Glenn Orlin,  
15 Jim Hughes from WMATA is here and Charlie Scott also and Gary Ehrnrich from DOT.  
16 I'm just going to spend a minute, I'm going to have to lower the screen while Jim starts  
17 talking, and then I'll, then he'll give the presentation. Mr. Knapp had asked for this  
18 presentation. The Board got a presentation on this back in May, the WMATA Board that  
19 is, and the staff has been going around the region sharing this information with other  
20 stakeholders. Jim, it's on you.

21  
22 Councilmember Andrews,  
23 Okay. Councilmember Floreen, some opening comments?

24  
25 Councilmember Floreen,  
26 I just wanted to say I look forward to hearing this presentation. We have asked, I have  
27 asked the T&E Committee will receive from the County, I'm hoping this fall, the County's  
28 transit plan. Hopefully together we will have a coordinated system that we can at least  
29 start talking about how we're going to implement. So I just wanted to say that at the  
30 outset, this is part of a larger puzzle, right? Yes. Thanks.

31  
32 Councilmember Andrews,  
33 Okay. Well, good afternoon, please introduce yourself for the listening audience.

34  
35 Jim Hughes,  
36 Good afternoon, and thank you for bringing me here today to make this presentation.  
37 My name is Jim Hughes. I'm the Managing Director of Planning at WMATA. This is  
38 pretty much a presentation we made to our Board last month, about what we see is the  
39 future bus operations in the region. I will go through it fairly quickly because it's been a  
40 long day for you. Over the past few months, we've been looking at both where we're  
41 going with the rail system, where we're going with the bus system. And a couple months  
42 earlier, we talked about how we're expanding on rail, going to 8 car trains and adding  
43 capacity on the rail side. This is the counterpart for the bus side. If you would start with  
44 the first slide, it's actually page number 3. I think you have it in front of you. And what



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1 we see is that generally, bus carries about 45% of our bus, of our riders in Metro, and  
2 rail carries about 55. Right side of the slide shows the reach of the bus and the reach of  
3 the rail. The rail is primarily along the rail lines, and yet the bus goes into a lot of the  
4 neighborhoods. That's basically what we're trying to show in terms of where we are, as  
5 we begin in the next 20 years to reach capacity on the railroad, what can we do on the  
6 bus side? We also looked at the region. The region is growing, you know that, the entire  
7 region's growing. Jobs are up 34% between now and the next 25 years or next 20  
8 years, between now and 2020. Population is going to grow. These are all numbers from  
9 COG. Households are up. Everything is happening. We see a need to be doing  
10 something different, both for bus and for rail. Strategically, in bus we've looked at, we've  
11 done a lot of studies, we've worked with all the jurisdictions including the County and  
12 the District and various states and said what can we do? We've got more and more  
13 studies, and it's time to get beyond the studies. So we're proposing a new type of  
14 program. So it won't go, we see a lot of growth in terms of potential, in terms of bus.  
15 We've got a challenge from our Board, basically saying it's time now to put out the plan  
16 for bus. So we came up with a Bus Priority Corridor which is the next slide. And if you  
17 just keep this up for a while I'm going to talk numbers around the slide. What we've  
18 proposed is a network of 24 corridors. They're the red lines on the slide. They are high  
19 rider ship on our existing bus lines. They're not necessarily new corridors to new areas.  
20 They represent 14% of our bus lines, but they carry 50% of our current bus riders, 220,  
21 000 riders a day or 70million rider as year, currently ride on those corridors. We've  
22 selected these corridors based on a number of things. In terms of performance, they're  
23 all high volume lines. We've got lots of buses, very close headways. We've looked at  
24 growth in the area, where it's happening, the land use, where it's going to happen in the  
25 next five, six years, and we've put together a schedule around this map that says we  
26 could implement these in the next six years, none of this is funded yet, but these are the  
27 types of programs we could implement in the next six years and really have a  
28 tremendous growth in terms of our ridership. How we're going to go about that, next  
29 slide if you would. We've done some of these corridors. We've implemented one on  
30 George Avenue within a district. This map in front of you is one we implemented at the  
31 end of June which is Pennsylvania Avenue, our heaviest bus corridor. And what we've  
32 done is we've taken a corridor, we've gone and looked specifically at each of the stops.  
33 Where do people get on, where do they get on at and we've restructured the service, so  
34 that we've kept the local service from --, we've added feeder services around the area,  
35 so people can get from neighborhood into the routes and we've added express service  
36 in the peak to get people a faster public transit on bus. And by doing this, we believe  
37 that we can improve the travel time by somewhere 15 to 20% in terms of the trials, so  
38 an average 30 minute bus trip can be reduced by somewhere between 6 to 8 to 10  
39 minutes. A real savings for the customers.

40  
41 Councilmember Andrews,  
42 Good.

43  
44 Jim Hughes,



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1 We've done it by talking to operators, we've done it by talking to communities, we've  
2 done it by talking to the local politicians. This plan on Pennsylvania Avenue took us  
3 about a year to develop, but it's now implemented and it's not perfect, but it's working  
4 really well given two weeks. And so we have seen travel times savings. Word of mouth  
5 people are going, have you tried the express, it's great out there. So, we're getting,  
6 seeing people to shift. And yet people that need to travel from one end to the other still  
7 have that. Again, how do we pick our corridors? We did it on passengers. We did it on  
8 where the development was going to happen. A couple interesting numbers. I won't go  
9 through them all. Each of these corridors averages about 10,000 riders a day. A number  
10 in the bottom right box. We carry a lot of people per hour, a lot of people per trip. You  
11 know, the average passenger trip time is 40 minutes on this. We're trying to cut that by  
12 20%. And the last one says that most of these corridors are all bus corridors. About  
13 6% of them are transferring from bus to rail. 94% of them are just bus riders. This is how  
14 we're going to improve the service for our bus riders in the next six years. Part of what  
15 we've laid out also is what helps make this is happen is improvements in the highway  
16 network. Each of these corridors is a target for signal priority, each of these  
17 corridors is an improvement for having better bus stops along it. As we go along a  
18 corridor and there's now 45 stops, as we put the express in, there's only 15 stops, it's  
19 faster we want to put something at those stops, new shelters, new signage, new  
20 amenities for customers. We also would like to have signal priorities. There are a couple  
21 of places where we've suggested queue jumper type of things. We're being requested  
22 to look at lanes along some of these corridors. None of them are specific yet. We told  
23 our Board we'd come back in November with the specifics for the corridors, but it's  
24 going to take more than just WMATA to implement, it's going to take all of the  
25 jurisdictions. The next slide shows some of the traffic congestions. Interesting thing,  
26 since 2000, the last nine years, buses have seen a reduction in average speed, we're  
27 somewhere between 15 to 30% operating slower. That's the congestion in the area. As  
28 our buses slow down, we add more time. So this priority corridor allows us to get that  
29 time back and give the advantage back to buses. And so what we're trying to do is get  
30 that speed back. Next slide is just saying that, what can we handle? Three or four  
31 corridors a year every year for the next six years gets us all these corridors  
32 implemented. It comes with a cost, it comes with an operating cost about \$25 million  
33 more a year now that is in our FY09 budget. And one time capital. We need more  
34 buses, we need garage space to store those, we need some transit facilities both along  
35 the corridors and places for buses to turn around, roadway improvements, park and ride  
36 signal, and garage capacity. We've listed them all in there. About 60% of that cost is a  
37 cost that would come directly through WMATA and again, our funding partners, the  
38 state and federal government and about 55% of that is really the highway improvements  
39 that we're look for, again, the state and the local governments. They're identified in  
40 there. We think there's a tremendous benefit to our riders. Half our bus riders could end  
41 up with a 20% time savings. If we get a 5% ridership increase in here, we can carry 10  
42 million more riders a day on the bus. We think there's a capability of doing that because  
43 that's where the corridors are growing. We listed some policy considerations because  
44 this is a plan for our Board to adopt but we think we can do the three to four corridors a



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1 year. That's asking them for three to four million dollars more a year. Again, that's not in  
2 our budget yet, but we're going to put it in our '10 request, more buses and places to  
3 store them. And we've also asked our Board and they've responded very positively,  
4 they would like to be spokespeople for this. So, I originally anticipated to have a Board  
5 member here with us today to help promote this and I think as we get into the funding  
6 phase, you'll see them sitting behind this saying, this is where we should be going. So  
7 the next, the rest of this is sort of where we go next. We're coming back to them in  
8 September saying, here's what we're doing next year, here's what we're doing the  
9 following year, coming back in November, and saying here is all of our long term capital  
10 projects and where it fits in our capital programming. If I could just get to the slide with  
11 all the corridors, page number 17. This is the description of each of the corridors that we  
12 put up there and I'm going to end with this slide, and not go any further, but these are  
13 the 24 corridors. The ridership is on average weekday ridership in here, we're interested  
14 in where they run. Some of them we've already implemented. Columbia Pike in Virginia  
15 got started. We have seen 15% increases in savings in travel time. We've also seen a  
16 15% increase in ridership down there. Richmond Highway, we've seen a 6% ridership  
17 increase and we've seen a 20% decline in, reduction in travel times. Georgia Avenue,  
18 we started as a peak hour only laying on top of it. The express service, those express  
19 buses are now full, we're adding more service to that. We've been able to reduce some  
20 of the local service out there to help supplement that. Again, it's a 20% travel time.  
21 We've seen some successes. What we're trying to do now is wrap it into a plan, wrap it  
22 into this because what we're getting is some people saying well, I want it in my corridor,  
23 why aren't you doing it in my corridor? We're trying to come up with this plan. This list of  
24 24 corridors, this is our priority. We've done some preliminary work with the jurisdictions,  
25 which ones come first. The Board has directed us to go back out to each of those  
26 jurisdictions and say, what are your priorities, how can we juggle this and get it within a  
27 six year corridor? We've had some six year timeframe. We've had some jurisdictions  
28 say no, add some. We've had one say take one off and add another. That's what we're  
29 going through now. We have another meeting tomorrow afternoon with all the technical  
30 staff saying, well, where are our comments for all this. We're going to wrap that up and  
31 bring it back to the Board in September. We're really excited about this. We think it  
32 really is a way to improve our bus system. You'll see new buses out there, you'll see  
33 different colored buses out there, you'll see similar types of things that are going to get  
34 people to want to ride bus again. So this is the outline of the plan. With that, I'll stop and  
35 entertain questions.

36  
37 Councilmember Andrews,  
38 Thank you very much for a very clear and concise presentation. Start with  
39 Councilmember Floreen.

40  
41 Councilmember Floreen,  
42 Thank you.

43  
44 Councilmember Andrews,



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1 Councilmember Ervin.

2  
3 Councilmember Floreen,  
4 I understand this is a plan in process.

5  
6 Jim Hughes,  
7 Yes.

8  
9 Councilmember Floreen,  
10 But, can you tell us a little bit more about what exactly the plan is? I see on circle 8,  
11 we've got bus only lanes identified and I suspect some parking plans or whatever. Do  
12 you have for each corridor, is that what you're working through?

13  
14 Jim Hughes,  
15 That's what we're working for.

16  
17 Councilmember Floreen,  
18 Those specific elements.

19  
20 Jim Hughes,  
21 I'm sorry, I didn't mean to interrupt you. That's what we're working through now, for  
22 instance, we're now working, we've got two corridors underway, 16th Street, and we've  
23 got Leesburg Pike where we're out looking, this is where the stops are, this is where the  
24 bottle necks are, and solutions to that with the communities. We've also got the Viers  
25 Mill plan that the County put together, that's got some aspects of it, and we're now in the  
26 phase of that corridor of going back and doing all the stop by stop ridership that we've  
27 got, also running time by stop by stop. So that that will lead us to which of those  
28 improvements will benefit the rider the most. That's probably going to take us 6 months  
29 to come up with, in terms of this is a package that we think to get together, in the past,  
30 we've put it together in about 3 months, we gone out to the public, we've revised it,  
31 come back and say, okay, this is where we want to be in Viers Mill Road, for instance, if  
32 that's our next corridor, and we say, next year, this year we'll plan for it, next year we'll  
33 implement it. Each of these are one year in advance.

34  
35 Councilmember Floreen,  
36 That's so wonderful. You know, around here it takes us many years to do much of  
37 anything. So, you're working closely with the County staff, I see they're nodding their  
38 heads.

39  
40  
41  
42 Jim Hughes,  
43 I hope they're nodding behind me.



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1 Councilmember Floreen,

2 They are, they are. Because this is of course, tremendously important to us and just  
3 understanding the elements of what you're thinking about in terms of roadway capacity  
4 and timing and all of that. That is the biggest issue. I would urge our County staff to take  
5 a very aggressive and creative approach to problem solving and we, I mean, that's  
6 really what we wanted to hear from County staff in terms of looking at functional bus  
7 ways that really serve that way and prioritize bus service. Maybe this is an answer to a  
8 number of the kinds of issues that we've been looking at, but understanding the detail,  
9 we tended to get very mired in the details without a clear vision of the object. If we can,  
10 if this is the way to do it, I really think it's just marvelous. You said, you know, you're  
11 going to be, it's collaboration with the jurisdictions, given Virginia's transportation  
12 challenges, I don't know, are they coming to the plate and contributing to the costs of all  
13 of this?

14  
15 Jim Hughes,

16 Our Board members in Virginia are very supportive of this. And two of the successful  
17 corridors we have are already in Virginia. The challenge in Virginia is actually going to  
18 be on the capital side.

19  
20 Councilmember Floreen,

21 Yeah.

22  
23 Jim Hughes,

24 So when we need more buses, I think that we've got some ability to fund that. I think  
25 that we're going to have a tremendous amount of support. I think the highway portion of  
26 it, the signal priorities, some of the stop improvements, some of the, are going to lag  
27 behind.

28  
29 Councilmember Floreen,

30 And those are parts that you will expect the local jurisdiction contribution for.

31  
32 Jim Hughes,

33 For the Department of Transportation in Virginia in that particular case.

34  
35 Councilmember Floreen,

36 Yeah. Why did you start there instead of here in Maryland? Or Montgomery County.

37  
38 Jim Hughes,

39 History.

40  
41 Councilmember Floreen,

42 That's okay, you are where you are. Well, we really do need to understand how we're  
43 going to make this happen. So we will be following this really, really closely.



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1 Jim Hughes,  
2 I commit to you, as we go through each of these, we can keep the Council updated as  
3 to where each of the projects are so as we start a corridor study project, where we are  
4 sort of halfway through and we're done with it and then tie it back to implementation, so  
5 we can give you progress updates as we go along.

6  
7 Councilmember Floreen,  
8 Yeah. And we're going to want to understand how it works with our ride-on service and  
9 how these pieces are going to function together. Great.

10  
11 Jim Hughes,  
12 Thank you.

13  
14 Councilmember Andrews,  
15 Okay. Thank you. Councilmember Ervin.

16  
17 Councilmember Ervin,  
18 Thank you very much for being here. I really appreciate first of all, Glenn Orlin's packet,  
19 because I think it, as usual has a lot of really good information. I see on the first page,  
20 one of the things that I'm most excited about, and concerned about at the same time, is  
21 that the buses are full. I've ridden Q2 a lot up Viers Mill, and the ride-on buses in rush  
22 hour traffic, sometimes you have to wait for two, maybe three buses depending on  
23 where in the County you live, to get on the ride-on bus, to go to the Metro or to the  
24 transit station to change. So what I've noticed is that we just need more. How do you get  
25 people out of their cars and onto the bus has been an ongoing conversation about who  
26 prefers transit over bus. And one of the things I've noticed is that folks really want to be  
27 able to sit down while they're waiting, or if it's raining, or if the weather is bad, be able to  
28 be out of the, not out in the elements. So what is WMATA's plan to build more structures  
29 for people to sit down at bus stops, or to have cover over their heads? I've seen this a  
30 lot of times that you're driving down, especially on Vier's Mill, there's not very many  
31 covered bus stops and I don't know whose responsibility that is. Oh, is it yours? It would  
32 make it a lot easier for people, if it's the County's responsibility, then how do we work  
33 that into the plan? Because I can see that a lot more people would be amenable to  
34 riding the bus if they knew they didn't have to just stand out in the elements and wait for  
35 the bus to come. But thank you very much for being here. I agree with everything that  
36 Councilmember Floreen said. I think that we've done a really good job in the County to  
37 respond to our citizens' request for more and more and more. And we're doing all we  
38 can to keep up with that.

39  
40 Jim Hughes,  
41 If I could just make two quick comments.

42  
43 Councilmember Andrews,  
44 Sure.



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1  
2 Jim Hughes,

3 One about the shelters, we were able, as we did the corridor on Pennsylvania Avenue,  
4 we twisted arms, we got the District to put up 30 shelters along that corridor and they  
5 are programmed for information in the future and lighting in the future so that we're able,  
6 they are in the middle of trying to put up more shelters with an advertising campaign. So  
7 we had some things going with us, we're able to do that. The other thing about how we  
8 can make this effective, if we reduce the travel time, we can actually get more trips out  
9 of the buses so we can put more service out there without buying new buses. That's  
10 part of what we're trying to accomplish by the overall program. So, there's a lot of little  
11 things in here that I glossed over, but we are trying to get more, some with more  
12 resources and some with the same resources.

13  
14 Councilmember Ervin,  
15 Okay. Thanks.

16  
17 Councilmember Andrews,  
18 Thank you. This appears to be a very well thought out plan to increase usage and  
19 increase the efficiency of the system and the operating costs seem manageable. The  
20 way I read it, is that over six years, the scaled in, by the time that it's fully implemented,  
21 which is six years, the annual operating costs are about \$25 million. Is that right?

22  
23 Jim Hughes,  
24 That's correct.

25  
26 Councilmember Andrews,  
27 Okay. The capital costs though that are outlined here, of course, are much larger, \$326  
28 million and my question is, how much of that is in the budget now, if any? And we've  
29 heard a lot about Metro's challenges in keeping up with the current system, so what is  
30 the plan there in terms of getting that additional capital money? And how much, if any, is  
31 in the current capital budget?

32  
33 Jim Hughes,  
34 At the moment very little of that is in our current program. We did our Metro Matters  
35 program which goes through the year 2010. So most of this money is beyond that. And  
36 so, with this summer, this September, we're bringing our Board with a capital program  
37 from 2011 to 2015 and all of these numbers are in there. I will caution you that that  
38 money is not funded yet. We're also, we're going to lay it out for the Board, this is what  
39 we need, we're going to come to some reasonable number and then come up with a  
40 funding plan for it between us and our jurisdictions, probably similar to Metro Matters.  
41 So yes, we're asking for more money and more needs, but we're putting all of our  
42 capital needs there, including this bus growth.

43  
44 Councilmember Andrews,





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1 Okay. And just spell out, one of the terms that's used here, that may not be intuitive is  
2 platform, was it platform, there, platform hours. I could guess, but just tell me.

3  
4 Jim Hughes,  
5 Those are actually the hours that a bus is driving up and down a road.

6  
7 Councilmember Andrews,  
8 Okay.

9  
10 Jim Hughes,  
11 An operator sits on a platform, technical term should be in there.

12  
13 Councilmember Andrews,  
14 Okay.

15  
16 Jim Hughes,  
17 We call them platform hours.

18  
19 Councilmember Andrews,  
20 Okay. All right. Councilmember Leventhal and then.

21  
22 Councilmember Leventhal,  
23 Earlier today, we adopted a set of transportation priorities for state funding, and two of  
24 our top three priorities are Bus Rapid Transit on Georgia Avenue and Bus Rapid Transit  
25 on Viers Mill Road. And I don't know whether you or maybe Gary or Carolyn or Glenn or  
26 someone can explain to me how does this relate to that?

27  
28 Glenn Orlin,  
29 Actually, I had sort of the same question. It goes beyond that, because also one of  
30 these corridors is the Purple Line corridor effectively. So, three of these corridors are  
31 ones where we actually have either active or planned major investment studies that are  
32 going and the question, I guess to follow up on Mr. Leventhal's question, when the feds  
33 are comparing the benefits of each of those larger facilities to something, are they  
34 comparing it to something like this which is like a TSM alternative, or are they  
35 comparing it to a no build, because that makes a difference.

36  
37 Gary Erenrich  
38 Gary Erenrich, Department of Transportation. To try to answer your question, it's a very  
39 good question, there is an overlap because Viers Mill, Georgia Avenue, the priority  
40 corridors for us, obviously, for Council, but the projects that are in those are heavy  
41 construction projects, they're civil projects, whereas they're building exclusive guide  
42 ways. Building a bus way in a median of Georgia Avenue. In terms of Viers Mill, building  
43 separate lanes for buses only, taking right-of-way, and what's talked about here is  
44 basically using the existing roadways as much as possible with the benefit of some



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1 queue jumpers, where they can be put in, where they have some benefits and some  
2 priority signal treatments. So this is the first.

3  
4 Councilmember Leventhal,  
5 I saw one graphic on G Street downtown that looked like a dedicated bus lane.

6  
7 Councilmember Floreen,  
8 Yeah.

9  
10 Jim Hughes,  
11 We've identified, we've talked about, we haven't written down, some dedicated bus  
12 lanes but there are very few of them. And the one that you saw was actually one that  
13 was there years ago that has been taken up. That was the one in downtown.

14  
15 Councilmember Leventhal,  
16 So you wouldn't be asking, on Georgia Avenue or Viers Mill Road in particular, you  
17 wouldn't be asking in your plan for a dedicated lane?

18  
19 Jim Hughes,  
20 No. Might be a queue jumper around one intersection where we think is key in terms of  
21 making the traffic flow. We had these discussions also in the District and also in  
22 Maryland, excuse me, District in Virginia where they have longer term plans to have  
23 BRT or have a light rail line, and I would like you to think of this as really just a stepping  
24 stone to get there, whether it's a TSM. This is what you would do with the existing right-  
25 of-way, this is what you would do with the existing resources and a little bit more in  
26 terms of not a capital project to get them there. It does help develop the corridor. It  
27 helps promote growth in a sooner time period. We could implement this type of thing in  
28 2009, 2010 along Viers Mill Road. Let the longer term BRT happen. We've got to deal  
29 with a little bit of the construction time period, but it really is a developmental thing to  
30 continue to grow the corridor.

31  
32 Councilmember Leventhal,  
33 How much permission do you need from the State Highway Administration to make  
34 these changes on state roads?

35  
36 Jim Hughes,  
37 Without the details in front of us, the real answer is we don't need a lot. We're going to  
38 need some, as a signal, maybe not in Montgomery County, but the signal priority type of  
39 thing is the permission that we're looking for working with them. But we do want them to  
40 buy into the plan, because we want them in the future to say well, I'm going to repave a  
41 part of the road. We want them to think that's one of these corridors, what can I do as I  
42 repave the road? What can I do to improve the corridor?

43  
44 Councilmember Leventhal,



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1 Okay. Getting back to my initial question. What is the difference between BRT which  
2 we're proposing on Viers Mill and Georgia and what you're proposing is what you're  
3 proposing may actually happen in the relatively feasible?  
4

5 Gary Erenrich

6 It's less, it's less, it's less, it's less costly to build.  
7

8 Councilmember Leventhal,  
9 BRT might take 60 years.  
10

11 Jim Hughes,  
12 Well, this is a much more short term improvement.  
13

14 Councilmember Leventhal,  
15 Yeah.  
16

17 Gary Erenrich

18 This is a good first phase because with BRT, you can implement it in phases, blocks at  
19 a time, or block segments at a time, where you have congestion and you have a right-  
20 of-way.  
21

22 Councilmember Leventhal,  
23 Sure.  
24

25 Gary Ehrnrich,

26 You can, like Viers Mill, we have bus lanes on Viers Mill right now. We're using them,  
27 particularly going westbound, that's pretty much an exclusive bus lane, but how can we  
28 use that better or what can we do going eastbound? We know where the intersections  
29 are, the problem intersections. But the issue on Viers Mill is, to do the queue jumpers,  
30 you need to take property, you need to take some fast food, perhaps some fast food  
31 operations or some other property, and that's a very difficult thing to do.  
32

33 Councilmember Leventhal,  
34 Thank you.  
35

36 Councilmember Andrews,  
37 Councilmember Floreen , then Councilmember Elrich.  
38

39 Councilmember Floreen,

40 Well, again, I don't want to let perfect be the enemy of the good in moving this stuff  
41 forward. But these are important issues that I hope we can talk about this fall as we look  
42 at transit to understand what's, you know, what works best, what's reasonably doable.  
43 We are a little frustrated with having these grand plans that we're not able to implement.  
44 So I think we're all collectively pretty thrilled about seeing something that might happen



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1 within our, you know, while we're still in these positions or close to them. If there are  
2 other ways that we can improve this kind of thinking, I know dollars are going to be tight,  
3 but let's put it all on the table and see where we can go with this stuff.

4  
5 Councilmember Andrews,  
6 Very good. Councilmember Elrich.

7  
8 Councilmember Elrich,  
9 My office is actually spending some serious money along with Roger to look at BRT  
10 planning and what some of the implications are for that both in terms of cost and  
11 functionality. I agree, this is a stepping stone. It's an intermediate step. It's, depending  
12 on the BRT system you adopt, any bus they invest in today can be used on a BRT  
13 system, there's no contradiction, for example, between buying, you know, a new Metro  
14 bus of any propulsion system and then being able to transfer that bus into a BRT  
15 system. So the investments made in that form of capital would be well spent, no matter  
16 what you're doing. I had a conversation with I guess it was Neil Peterson about, you  
17 know, their view of BRT particularly on Georgia Avenue or in any place actually, their  
18 biggest concern, other than how do you find the money for it, is the left turn movements.  
19 And this continues to be a conundrum for the state is how are you going to govern the  
20 left turn movements because essentially, if the BRT runs down the center or down the  
21 median strips, you've got to be able to accomodate people going left. And there are all  
22 kinds of ways of doing it. And some involve the same impact as a queue jumper which  
23 is you wind up taking some property, others involve slightly widening the roads as you  
24 get to intersections and dedicating, sometimes you talk about going under or over the  
25 intersections, but there are, you know, solutions. All solutions cost money. But we're  
26 trying to get an idea of what can be done. I was in New York and talking to the people  
27 who are implementing New York's Bus Rapid Transit system on the surface of New  
28 York, which totally blew me away. This is downtown Manhattan, and they're taking two  
29 roads between 1st and 7th Avenue that are currently six lanes and they're converting  
30 them to four lane roads one way, and two lanes of cars, and two lanes of buses. They're  
31 flat out taking two lanes of auto use out altogether and just putting buses. And they're  
32 taking 34th Street and some of the other east west roads in Manhattan and doing the  
33 same thing, taking away car lanes and putting in dedicated bus. So they're doing this in  
34 downtown New York, I found that absolutely amazing.

35  
36 Councilmember Andrews,  
37 Thank you Councilmember Elrich. Well, there's a lot of interest as you can see in this,  
38 and everyone's excited that this can be done quickly compared to most projects that  
39 we're familiar with. So, that's one of the advantages of buses.

40  
41 Jim Hughes,  
42 Yes it is.

43  
44 Councilmember Andrews,



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1 Make quick changes, and they're flexible, and they're inexpensive compared to some  
2 projects, some other transportation projects. Thank you for the presentation, thank you  
3 for being here. I think the Council looks forward to continuing to work with Metro and  
4 WMATA on these issues and appreciate your Briefing.

5  
6 Jim Hughes,  
7 Well, thank you very much.

8  
9 Councilmember Andrews,  
10 Now, we have one more item of business for the Council today, and that is we have a  
11 proposed closed session. I need a motion actually for a proposed closed session which  
12 is scheduled to take place right away in the sixth floor conference room.

13  
14 Councilmember Floreen,  
15 So moved for the purpose as stated.

16  
17 Councilmember Andrews,  
18 All right. There you go. If you just want to read it out.

19  
20 Councilmember Floreen,  
21 Pursuant to Maryland Code, State Government Article 10-508 A7 and 8 on a first  
22 amendment issue.

23  
24 Councilmember Andrews,  
25 Right. To receive legal advice regarding pending or potential litigation. Hear a second?

26  
27 Councilmember Trachtenberg,  
28 Second.

29  
30 Councilmember Andrews,  
31 Okay. All those in favor of a closed session say aye. Okay. All right. Let's.